159 U.S.S.-90

Argued Feb 23

Decided Feb 30. 1895

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 517.

W. H. CLUNE, ISAAC ROSS, AND PHILIP STANWOOD,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED JANUARY 31, 1895.

(15,782.)

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1 6.

(Original.)

In the District Court of the United States for the Southern District of California.

THE UNITED STATES OF AMERICA:

United States District Court for the Southern District of California, *ss:*

To George J. Denis, United States attorney for the southern district of California, Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Supreme Court to be holden at the city of Washington, in the District of Columbia, on the fourth day of February next, pursuant to the writ of error filed in the clerk's office of the district court of the United States for the southern district of California, wherein W. H. Clune, Isaac Ross, and Philip Stanwood are plaintiffs in error and The United States is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 24 day of December, in the year of our Lors one thousand eight hundred and ninety-four, and the Independence of the United States of America the one hundred*th* and nineteenth year.

E. M. ROSS,
U. S. District Judge.

2 I hereby, this 24 day of December, accept due personal service of this citation on behalf of The United States of America, the defendant in error.

JOS. H. CALL,
GEORGE J. DENIS,
For United States.

3 [Endorsed:] 6. No. 640. Dept. No. —. In the —— court, State of California. United States of America, plaintiff, *vs.* W. H. Clune, Isaac Ross, and Phillip Stanwood, defendant-. Citation. Rec'd copy of within this — day of ——, 189–. Jos. H. Call & George J. Denis, attorneys for U. S. Filed December 24th, 1894. E. H. Owen, clerk, by —— ——, deputy clerk. Johnstone Jones, attorney for —— ——, room 6, Law building, Temple street, Los Angeles, Cal.

4 5. O K.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the southern district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States, as plaintiff, and W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson, defendants, a manifest error hath happened, to the great damage of the said W. A. Clune, Isaac Ross, and Philip Stanwood, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the 4th day of February next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 24th day of December, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

Seal of the U. S. District Court, Southern Dist. of California.

E. H. OWEN,
Clerk of the U. S. District Court in and for the Southern District of California.

The above writ of error is hereby allowed.

ROSS,
Dist. Judge.

5 [Endorsed:] United States Supreme Court. W. H. Clune, Isaac Ross, and Phillip Stanwood, plaintiffs in error, *vs.* The United States of America, defendant in error. Writ of error. Filed Dec. 24, 1894. E. H. Owen, clerk, —— ——, deputy.

I hereby certify that a copy of the within writ of error was on the 24th day of December, 1894, lodged in the clerk's office of said United States district court for the southern district of California for the said defendant in error.

E. H. OWEN,
Clerk U. S. District Court, Southern District of California.

6 *The Answer of the Judge of the District Court of the United States in and for the Southern District of California.*

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify, under the seal of said district court, to the Supreme Court of the United States, in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[Seal of the U. S. District Court, Southern Dist. of California.]

E. H. OWEN, *Clerk.*

7 In the District Court of the United States for the Southern District of California.

At a stated term of said court begun and holden at the city of Los Angeles, county of Los Angeles, within the southern district of California, on the second Monday in January, in the year of our Lord one thousand eight hundred and ninety-four, the grand jurors of the United States of America within and for the district aforesaid on their oath present—

That W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood, all late of the southern district of California, heretofore, to wit, on the 28th day of June, in the year of our Lord one thousand eight hundred and ninety-four, did, at the city of Los Angeles, county of Los Angeles, within the southern district of California and within the jurisdiction of this honorable court, feloniously, knowingly, and wilfully conspire, combine, confederate, and agree together and with certain other persons whose names are unknown to this grand jury to commit an offense against the laws of the United States, to wit, to obstruct and retard the passage of the mails of the United States upon any and all regular trains of cars of the Southern Pacific Company, a railroad corporation formed and existing under the laws of the State of Kentucky and engaged in transporting the mails of the United States between Portland, in the State of Oregon, and New Orleans, in the State of Louisiana, by way

8 of Los Angeles, in the State of California, within this judicial district; and the said W. H. Clune, A. T. Johnson, Isaac Ross, and Philip Stanwood, acting in pursuance and furtherance of said combination, conspiracy, and agreement to obstruct and retard the mails of the United States as aforesaid, did, at said city of Los Angeles and within the said southern district of California, knowingly, wilfully, and feloniously, on the 28 day of June, A. D. 1894, obstruct and retard the passage of the mails of the United States in and upon a certain train of cars belonging to and operated by the said Southern Pacific Company, which said train of cars had theretofore been designated by the Postmaster General of the United States as one of the trains in and upon which the said mails of the United States should be carried by the said railroad company—

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the said United States.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) Names of witnesses examined before the grand jury on finding the foregoing indictment: A. P. Maginnis, W. B. Beamer, Wm. McGovern, K. H. Wade, J. M. Johnson, J. A. Muir, Chas. Turner, J. W. Erwin, J. J. Finn. No. 640. United States district court, southern district of California. The United States of America *vs.* W. H. Clune *et als.* Indictment for violation of § 5440 R. S. A true bill. Joseph W. Wolfskill, foreman. Presented and filed in open court this 3rd day of July, A. D. 1894. E. H. Owen, clerk. George J. Denis, United States attorney.

9 In the United States District Court of the Southern District of California.

UNITED STATES
vs.
W. H. CLUNE.

The defendants, not having been held to answer before the finding of the indictment herein, moves this honorable court to set aside and quash the indictment on the ground that upon and prior to the finding and presentment of said indictment a state of mind existed on the part of each of the grand jurors finding the same in reference to the case and to this defendant which prevented him then and there from acting impartially and without prejudice to the substantial rights of the defendants.

And defendant further moves the court that each of said grand jurors be cited to forthwith appear before this honorable court to answer under oath concerning the same, and that thereupon said indictment be set aside and defendant go hence without day.

BYRON WATERS,
C. C. STEPHENS,
Att'ys for Def't.

(Endorsed:) No. 640. U. S. dist. court, so. dist. of California. United States, plaintiff, *vs.* W. H. Clune, defendant. Motion to quash indictment. Filed July 7th, 1894. E. H. Owen, clerk. Waters & Stephens, rooms 3 and 4 Phillips block, Los Angeles, Cal., attorneys for def't.

10 In the United States District Court of the Southern District of California.

UNITED STATES
vs.
A. T. JOHNSON.

The defendant, not having been held to answer before the finding of the indictment herein, moved this honorable court to set aside

and quash the indictment on the ground that upon and prior to the finding and presentment of said indictment a state of mind existed on the part of each of the grand jurors finding the same in reference to the case and to this defendant which prevented him then and there from acting impartially and without prejudice to the substantial rights of the defendants.

And defendant further moves the court that each of said grand jurors be cited to forthwith appear before this honorable court to answer under oath concerning the same, and that thereupon said indictment be set aside and defendant go hence without day.

BYRON WATERS,
C. C. STEPHENS,
Att'ys for Def't.

(Endorsed:) No. 640. U. S. dist. court, so. dist. of California. United States, plaintiff, *vs.* A. T. Johnson, defendant. Motion to quash indictment. Filed July 7th, 1894. E. H. Owen, clerk. Waters & Stephens, rooms 3 and 4 Phillips block, Los Angeles, Cal., attorneys for def't.

11 In the United States District Court of the Southern District of California.

UNITED STATES)
vs.)
PHILLIP STANWOOD.)

The defendants, not having been held to answer before the finding of the indictment herein, moves this honorable court to set aside and quash the indictment on the ground that upon and prior to the finding and presentment of said indictment a state of mind existed on the part of each of the grand jurors finding the same in reference to the case and to this defendant which prevented him then and there from acting impartially and without prejudice to the substantial rights of the defendants.

And defendant further moves the court that each of said grand jurors be cited to forthwith appear before this honorable court to answer under oath concerning the same, and that thereupon said indictment be set aside and defendant go hence without day.

BYRON WATERS,
C. C. STEPHENS.
Attorney- for Def'ts.

(Endorsed:) No. 640. U. S. dist. court, so. dist. of California. United States, plaintiff, *vs.* Phillip Stanwood, defendant. Filed July 7th, 1894. E. H. Owen, clerk. Motion to quash. Rooms 15 and 16 Phillips block, Los Angeles, Cal. —— ——, attorneys for —— ——.

12 In the United States District Court of the Southern District of California.

UNITED STATES
vs.
ISAAC ROSS.

The defendants, not having been held to answer before the finding of the indictment herein, moves this honorable court to set aside and quash the indictment on the ground that upon and prior to the finding and presentment of said indictment a state of mind existed on the part of each of the grand jurors finding the same in reference to the case and to this defendant which prevented him then and there from acting impartially and without prejudice to the substantial rights of the defendants.

And defendant further moves the court that each of said grand jurors be cited to forthwith appear before this honorable court to answer under oath concerning the same, and that thereupon said indictment be set aside and defendant go hence without day.

BYRON WATERS,
C. C. STEPHENS,
Att'ys for Def't.

(Endorsed:) No. 640. U. S. dist. court, so. dist. of California. United States, plaintiff, *vs.* Isaac Ross, defendant. Motion to quash indictment. Filed July 7th, 1894. E. H. Owen, clerk. Waters & Stephens, rooms 3 and 4 Phillips block, Los Angeles, Cal., attorneys for def't.

13 At a stated term, to wit, the January term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Saturday, the 7th day of July, A. D. 1894.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.
No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., present for the Government.

The defendants each present on bail, with their attorneys, Byron Waters, Esq., and C. C. Stephens, Esq.

This being the time set for the arraignment & plea herein, now come the defendants, with their attorneys, and make the following motion on behalf of each defendant: The defendants, not having been held to answer before the finding of the indictment herein, move this honorable court to set aside and quash the indictment on the ground that upon and prior to the finding and presentment of said indictment a state of mind existed on the part of each of the grand jurors finding the same in reference to the case and to these

defendants which prevented him then and there from acting impartially and without prejudice to the substantial rights of the defendants; and defendants further move the court that each of said grand jurors be cited to forthwith appear before this honor-
14 able court to answer under oath concerning the same, and that thereupon said indictment be set aside and defendants go without day. Thereupon the grand jurors, being all present in court, are sworn to testify in the matter of said motion and challenge, and are called, and each testifies respectively as their names appear on the roll of the grand jury in reference to said matter. Upon examination by defendants' counsel and the U. S. attorney, upon the testimony of Grand Juror Harlan P. Sweet, the following witnesses are called, sworn, and testify on the part of the defendants: G. W. Hollenbeck and Gregory Perkins.

Juror Sweet, by permission of the court, calls as a witness A. L. Jeffreys, who is sworn and is questioned by said juror and the U. S. attorney.

It now being the hour of 12.30 p. m., the grand jurors are excused until Monday, July 9th, 1894, at 10 a. m., and a recess is taken until 2 o'clock p. m. of this day.

At 2 o'clock p. m. the court reconvened.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

Present: George J. Denis, Esq., U. S. attorney, on behalf of the Government.

The defendants each in court, with their attorneys, Byron Waters, Esq., and C. C. Stephens, Esq.

Argument is now had by C. C. Stephens, Esq., and Byron Waters, Esq., upon said motion to squash and the matter of the challenge of the grand jurors, and the U. S. attorney, upon his motion, is
15 given until Wednesday, July 11th, 1894, to file a brief herein, and a further hearing and consideration of all of said matters are continued until said brief is presented.

16 At a stated term, to wit, the January term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 16th day of July, A. D. 1894.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, present for the Government; no one present for defendants.

In this cause, a motion having been heretofore made by Byron

Waters, Esq., and C. C. Stephens, Esq., defendants' attorneys, to quash the indictment herein, and upon said motion the grand jurors who presented the said indictment having been challenged, and their testimony having been taken and a hearing had upon said motion in open court, and the matter having been thereupon submitted to the court for its consideration and decision, now, at this day, the court, having fully considered said matter, files its opinion and denies said motion.

17 At a stated term, to wit, the January term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the 17th day of July, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE *et al.* } No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, present for the Government; C. C. Stephens, Esq., present for the defendants.

On motion of defendants' attorney and by consent, it is ordered that the arraignment and plea of defendants be set for July 20th, 1894, at 10.30 o'clock a. m. Defendants' attorney now excepts to the ruling of the court made and entered herein on July 16th, 1894, denying the motion of said defendants to quash the indictment, and it is ordered that defendants be allowed ten days within which to prepare and file a bill of exceptions.

18 In the District Court of the United States of the Southern District of California.

UNITED STATES OF AMEIRCA
vs.
W. H. CLUNE *et al.* } No. 640.

The defendants, W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood, demur to the indictment in this cause upon the grounds—

(1.) That there are not stated in said indictment any facts constituting any public offence.

(2.) That said indictment is not sufficiently certain and definite to apprise the defendants of the nature of the charge against them or to enable them to prepare for their defense, in this:

That it is not alleged in said indictment with sufficient certainty what was the agreement constituting the conspiracy nor the object of such conspiracy; neither is it alleged therein with sufficient definiteness or certainty what act the defendants did in pursuance

of such conspiracy whereby it is claimed that they did obstruct or retard the passage of the mails of the United States.

C. C. STEPHENS,
BYRON WATERS,
Att'ys for Def't.

19 (Endorsed:) (Originals.) No. 640. Superior court, Los Angeles county, State of California. United States of America, plaintiff, *vs.* W. H. Clune *et al.*, defendants. Demurrer to indictment. Carpenter & Prescott, rooms 15 and 16 Phillips block, Los Angeles, Cal. Filed July 21, 1894. E. H. Owen, clerk.

20 At a stated term, to wit, the January term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Thursday, —— 9th, A. D. 1894.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, present for the Government; C. C. Stephens, Esq., present for defendants.

In this cause, a demurrer to the indictment having been heretofore argued and submitted to the court, and the matter having been fully considered, it is now ordered that said demurrer be, and the same hereby is, overruled; to which ruling of the court defendants, by their attorney, except. It is further ordered that the plea of defendants be continued and set for Monday, August 13th, 1894, at 10.30 a. m.

21 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the city of Los Angeles, on Monday, the 13th day of August, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, and ISAAC ROSS and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, present for the Government; defendants all in court, with their attorney, C. C. Stephens, Esq., except Phillip Stanwood, and it is stated by his attorney that he is sick and unable to attend in court.

This being the time fixed for the plea of defendants, now, on motion of the U. S. attorney, the defendants are called and each pleads not guilty, except Phillip Stanwood. Defendants' attorney waives

the presence of defendant Phillip Stanwood and enters the plea of not guilty for him, which pleas are ordered entered of record. On motion of the U. S. attorney and by consent of defendants' attorney, it is ordered that the trial of this cause be set for October 4th, 1894, at 10.30 a. m.

22 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Saturday, the 17th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special ass't U. S. att'y, present for the Government. Defendants each in court on bail, with their attorneys, G. M. Holton, Esq., and W. T. Williams, Esq.

This cause coming on regularly for trial at this hour, respective counsel announce that they are ready, and the U. S. attorney states that he elects to try case No. 640 against these defendants; thereupon it is ordered that the trial proceed, and the following 12 names of jurors are drawn from the box, called, and the jurors are sworn on *voir dire:* Charles F. Stamps, John A. Henderson, E. J. King, George A. Howard, W. P. Leavitt, J. M. Menefee, Albert Phelps, Porter H. Matthews, H. A. Osgood, E. W. Reid, Robert W. Pierce, and Lebbius Schofield. Upon examination, Charles F.

23 Stamps, John A. Henderson, George A. Howard, W. P. Leavitt, J. M. Menefee, Albert Phelps, Porter H. Matthews, and E. W. Reid are challenged peremptorily by defense and excused, and E. J. King, W. P. Leavitt, H. A. Osgood, Robert W. Pierce, and Lebbius Schofield are respect*fully* and severally accepted and sworn to try the case. The names of Leopold Sanders, Louis Roeder, E. C. Richey, George H. Heuck, Charles H. Salisbury, Albert Rozelle, and George H. Norton are drawn, called, and the jurors sworn on *voir dire*. Upon examination, E. C. Richey and Albert Rozelle are challenged peremptorily by defense and excused, the remaining five jurors having been respectively and severally accepted and sworn to try the case. The names of W. W. Widney and Louis A. Stahl are drawn, called, and the jurors are sworn on *voir dire*. Upon examination, W. W. Widney is challenged peremptorily by the defense and excused, and Louis A. Stahl is accepted and sworn to try the case. The name of Wm. E. Oliver is drawn, called, and the juror is sworn on *voir dire*. The defense having exhausted their challenges, the juror is examined and accepted by the U. S. attorney and sworn to try the case.

The jurors as impaneled and sworn to try the case are as follows:

E. J. King.	Louis Roeder.
W. P. Leavitt.	George H. Heuck.
H. A. Osgood.	Charles H. Salisbury.
Robert W. Pierce.	George H. Norton.
Lebbius Schofield.	Louis A. Stahl.
Leopold Sanders.	Wm. E. Oliver.

24 The term trial jurors not impaneled herein are excused until November 21st, 1894, at 10.30 a. m., and the indictment is read to the jury and the plea of each defendant of not guilty stated. The U. S. attorney offers in evidence articles of incorporation of S. P. Co. of Kentucky, which are admitted and filed as Government's Exhibit "1." J. M. Johnston is called, sworn, and testifies for the Government. Government's Exhibit "2" (schedule of mail trains for month of June, 1894) offered, admitted, and filed. It now being the hour of 12.30, a recess is taken until 2 p. m. of this day, and witnesses and jurors are instructed to return at that hour.

At 2 p. m. court reconvenes, respective parties present in court as hereinbefore stated. The jury is called and all answer, and it is ordered that the trial proceed. J. M. Johnston takes the stand and testifies for the Government. James W. Erwin and R. R. Haines are duly sworn and give their testimony, and Government's Exhibits 3, 4, 5, and 6 (telegrams) are admitted in evidence. E. A. Beardslee is called, sworn, and testifies for the Government. J. H. Ramboze is called, sworn, and testifies for the Government, and Government's Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 (telegrams) are admitted in evidence. Harry A. Phillips is called, sworn, and testifies for the Government, and Government's Exhibits 26, 27, and 28 (telegrams) are admitted and filed in evidence. W. J. McIntyre called, sworn, and testifies for the Government, and
25 Government's Exhibits 29 and 30 (telegrams) are offered and admitted and filed in evidence. F. V. Gordon is called, sworn, and testifies for the Government, and Government's Exhibits 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 (telegrams) are offered, admitted, and filed in evidence. J. A. Muir is called, sworn, and testifies for the Government, and Government's Exhibit 43 (S. P. timetable) is offered and admitted in evidence. Government's Exhibit 44 (letter from Clune *et al.* to Muir) offered and admitted in evidence, and Government's Exhibit 45 (poster by A. R. U.) offered and admitted in evidence. D. Burkhalter called, sworn, and testifies for the Government. J. A. Muir is recalled and testifies for the Government. Frank E. Pryor is called, sworn, and testifies for the Government. It now being the hour of 4.30 o'clock p. m. and the hour for adjourning court, the jury are instructed and cautioned by the court not to converse among themselves in reference to the case nor to allow any one to approach them and converse with them in reference thereto, and if any one should so approach them to report the same forthwith to the court. It is ordered that further proceedings herein be adjourned and continued until Monday, November 19th,

1894, at 10.30 o'clock a. m., and the jurors and witnesses not discharged are ordered to return at that hour.

26 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 19th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA, *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special assistant U. S. attorney, present for the Government; the defendants each in court, with their attorneys, G. M. Holton, Esq., and W. T. Williams, Esq.

This cause having been partially tried and continued to this date, pursuant to order of the court the jury is called and all answer, and on motion of the U. S. attorney it is ordered that the trial herein be continued until 1.30 o'clock p. m. At 1.30 o'clock p. m. court reconvenes, the respective parties being present as hereinbefore stated. Pursuant to order of court, the jury is called and all answer. It is ordered that the trial proceed, and J. W. Muir is recalled and testifies for the Government. Government's Exhibit "46" (letter
26½ from Stanwood *et al.* to Muir *et al.*) offered, admitted, and filed. Geo. H. Odell, J. J. Finn, Wm. Stewart, Geo. E. Lewis, and M. H. Flint are called, sworn, and testify for the Government, and Defendants' Exhibit "1" (newspaper containing opinions of U. S. Attorney George J. Denis and J. H. Call, Esq., special assistant U. S. attorney, directed to J. M. Johnston July 7, 1894) offered, admitted, and filed. J. A. Muir is recalled for the Government and testifies. George J. Denis offers himself as a witness and is sworn and testifies for the Government. Thereupon the Government rests. The defendants rest without introducing any testimony. Thereupon argument is had by J. H. Call, Esq., assistant U. S. attorney, for the Government, and by G. M. Holton, Esq., for the defendants. It now being the hour of 4.15 o'clock p. m., at the request of counsel it is now ordered that further proceedings be continued until November 20th, 1894, at 10.30 o'clock a. m., and the jurors are ordered to return at that hour.

27 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the 20th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special assistant U. S. attorney, present for the Government; defendants each present in court on bail, with their attorneys, G. M. Holton, Esq., and W. T. Williams, Esq.

In this cause, testimony having been heretofore introduced, both oral and documentary, and the case having been partially argued on November 19th, 1894, and a further hearing having been continued to this day, now, pursuant to order of court, the jury is called and they all answer; argument is had by W. T. Williams, Esq., for defendants, and the closing argument by George J. Denis, Esq., U. S. attorney, for the Government. Defendants' written instructions, as modified by the court, are read to the jury by the
28 court, and the court reads to the jury its own instructions, and at the hour of 11.45 a. m. the jury retire to consider of their verdict. At 4.15 o'clock p. m. the jury come into court, and, the defendants being present, the names of the jurors are called and all answer. Upon being asked if they have agreed upon a verdict they reply that they have not; thereupon they again retire to consider of their verdict.

29 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Wednesday, the 21st day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special assistant U. S. attorney, present for the Government; the defendants each in court, in custody of the U. S. marshal, with their attorneys, W. T. Williams, Esq., and G. M. Holton, Esq.

In this cause, the jury having retired to consider of their verdict on November 20th, 1894, now, at the hour of 10.30 a. m. on this day, comes the jury and, their names being called, all answer. Upon being asked if they have agreed upon a verdict they reply that they have not. Thereupon the court further instructs the jury by reading written instructions to them, all of which *is* excepted to by the defendants' attorneys. The jury then retires to consider of their verdict. The jurors immediately upon retiring send into
30 court and ask that they be allowed to take into their room a book entitled "Postal Laws and Regulations of the United States of America, 1893," which contains on page 288 thereof, at

section 694, penalty for obstructing United States mails and under said section, on the same page, an excerpt from opinion of the court in the case of United States *v.* Clark, 13 Philadelphia, 476, and which was referred to by the witnesses Erwin and Flint in the trial of this cause as having been read by them to defendants Johnson and Ross. The jurors are then brought into court and, their names being called, all answer, and the court then reads the following from said book and page: "It is a criminal offense to obstruct a mail train, although those guilty are willing to permit the passage of the mail car alone (United States *v.* Clark, 13 Philadelphia, 476)," to all of which defendants except, and the jury again retire to consider of their verdict. Now, at the hour of 11.20 a. m., comes the jury and, their names being called, all answer, and upon being asked if they have agreed upon a verdict their foreman replies that they have and presents the following verdict:

"In the District Court of the United States in and for the Southern District of California.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, & PHILLIP STANWOOD.	No. 640.

We, the jury in the above-entitled cause, find the defendants, W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood, guilty as charged in the indictment.

Los Angeles, Nov. 21, 1894.

LEOPOLD SANDERS, *Foreman.*"

31 Pursuant to order of court, the verdict is recorded, read to the jury, and by them approved as recorded. The jury are discharged and ordered to return on November 27th, 1894, at 10.30 o'clock a. m. It is ordered that defendants be remanded to the custody of the marshal, and that their sentence be set for Monday, November 26th, 1894, at 10.30 o'clock a. m. Defendants are remanded.

32 But, gentlemen of the jury, the defendants are not indicted for having quit work. The offense with which they are charged is in effect that at the time and place mentioned in the indictment they, Clune, Johnson, Ross, and Stanwood, wilfully, unlawfully, and feloniously combined and confederated together and with diverse other persons to the grand jurors unknown to obstruct and retard the passage of the United States mails upon all regular trains of cars of the Southern Pacific Company within this judicial district, and that, acting in furtherance and pursuance of such conspiracy and agreement, they, Clune, Johnson, Ross, and Stanwood, did, at the time and place alleged in the indictment, knowingly, wilfully, unlawfully, and feloniously obstruct and retard the passage of the mails of the United States in and upon a certain train of cars be-

longing to and operated by the said Southern Pacific Company; which train of cars had theretofore been designated by the Postmaster General of the United States as one of the trains in and upon which the United States mails should be carried by the said railroad company.

The charge, you will observe, is that the defendants combined and confederated together and with diverse other unknown persons to commit the acts alleged, and that in pursuance of such conspiracy they did commit the alleged acts. A conspiracy is an agreement or combination between two or more persons to effect an unlawful purpose. If you find that the alleged conspiracy
33 was formed and entered into by and between these defendants and other persons or by and between either of the defendants and other persons, then each and every act and declaration of either conspirator in the execution of the conspiracy is in law the act and declaration of all of the conspirators. Whether or not the conspiracy existed may be established by circumstantial as well as by direct evidence.

If you find that the alleged conspiracy was formed, and that all of the defendants entered into it and thereafter committed the acts alleged in the indictment with the intent therein alleged, then and in that event you should find the defendants guilty as charged. If you find that the alleged conspiracy was formed, and that either of the defendants entered into it and thereafter committed the acts alleged in the indictment with the intent therein alleged, then and in that event you should find the defendant or defendants so entering into such conspiracy and committing such acts guilty as charged, and the other defendant or defendants not joining in such conspiracy or not committing the alleged acts not guilty. If you find that the alleged conspiracy was never entered into by either of the defendants, or that the alleged acts were never committed by either of them, the case of the Government will, of course, fall to the ground, and your verdict should be not guilty as to either.

Congress has declared by statute that any person who shall knowingly and wilfully obstruct and retard the passage of
34 the mail is guilty of a crime and shall be punished in a certain prescribed way. It is further provided by a statute of the United States that the Postmaster General shall in all cases decide upon what trains and in what manner the mails shall be conveyed, and if you find from the evidence that that officer has, through his subordinates, designated for the Southern Pacific Company in this judicial district the regular passenger trains of that road for the carrying of the United States mails that company is not by the law required to run any other trains than its regular passenger trains for the carrying of the mails, and their failure to do so is not a violation of any law of the United States.

Evidence has been introduced upon the part of the Government to show that on the 27th of June of this year the regular passenger train of the Southern Pacific Company known as number 18 was due to leave the Arcade depot, in this city, at 2 o'clock p. m. for San Francisco; that the mail of the United States was placed upon

that train, in charge of the postal officers; that the train started from the Arcade depot, about fifteen or twenty minutes late, carrying the United States mail, and reached the River station, in this city; that it did not and could not proceed further that day or for several days thereafter, and that the mail could not be sent by the regular passenger trains of the Southern Pacific Company for a number of days immediately succeeding the 27th of June.

35 This evidence upon the part of the Government is not disputed. Now, who retarded the mails? Why did not the regular and usual passenger trains upon which the mails were regularly dispatched proceed? Who impeded their progress? Was there a combination of men to prevent the running of the train mentioned in the indictment, as well as all other passenger trains of the Southern Pacific Company; and, if so, were these defendants parties to such conspiracy, and did they, in pursuance of such conspiracy, impede or retard the mail? If they impeded or retarded the progress of the train upon which the mail was being carried they necessarily impeded and retarded the mail. Every man is presumed to intend the ordinary consequence of his wilful act. You have heard the testimony of the various witnesses upon the part of the Government and have seen the various telegrams and letters and other communications. No evidence has been given upon the part of the defendants. The defendants, however, were not obliged to testify in their own behalf, and no inference against them is to be drawn from their failure to do so. The burden remains upon the prosecution to establish the guilt of the defendants beyond a reasonable doubt. The facts of the case are for your determination, and you are the exclusive judges of the credibility of each and every witness; you are to look at and consider the case as reasonable and sensible men, and can, I think, in view of the evidence, have no difficulty in arriving at the truth; you should be sure it forms the basis of your verdict.

36 (Endorsed:) No. 640. U. S. district court, southern district of California. United States of America *vs.* W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood. Instructions of the court as given. Filed November 20th, 1894. E. H. Owen, clerk.

37 *Instructions Asked by the Defendants.*

(1.) In every crime or public offence there must exist
Given. a union or joint operation of act and intent or criminal negligence. The intent or intention is manifested by the circumstances connected with the offence and the sound mind and discretion of the accused.

(2.) A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a rea-
Given. sonable doubt whether his guilt is satisfactorily shown he is entitled to an acquittal.

(3.) The burden of proof is upon the prosecution. All the pre-

sumptions of law are in favor of innocence, and every
Given. person is presumed to be innocent until he is proven guilty.

(4.) If upon the proof introduced there is a reasonable doubt remaining, the accused is entitled to the benefit of that
Given as doubt by an acquittal. A reasonable doubt is not a
modified. mere imaginary or possible doubt, but is a doubt that arises out of the evidence, and that is reasonable in view of all the facts and circumstances of the case.

(5.) It is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances that the facts
Given as charged are more likely to be true than the contrary
modified. nor by a mere preponderance of evidence, but the evidence must establish the truth of the charge to a reasonable and moral certainty.

(6.) In a decision of a criminal case there
Refused. must be more than a preponderance of evidence;
38 it would not be sufficient to justify conviction if the jury should be satisfied of the guilt of the defendants to such a moral certainty as would influence their minds in the important affairs of life, but the evidence — entirely satisfy the jury of the guilt of the defendant before they can convict. If the jury are not entirely satisfied as to the defendant's guilt they should acquit.

(7.) The court instructs the jury that it is not a violation of the criminal law for an employee to quit work; he has the
Given. same right to quit work that his employer has to discharge him, and this right is the same where a large number of employees quit work as where one individual does so.

(8.) The defendants, W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood, are charged in this indictment
Refused. with conspiracy to obstruct and retard the passage of the United States mails. The court instructs you that you cannot find one of them guilty unless you find them all guilty, and if the proof does not establish the guilt of any one of them then you must acquit them all.

(Endorsed:) No. 640. In the U. S. district court, southern district of the State of California. The People of the United States, plaintiff, *vs.* W. H. Clune, A. T. Johnson, Isaac Ross, & Phillip Stanwood, defendants. Instructions asked by defendants and as modified and given by the court. Filed November 21st, 1894. E. H. Owen, clerk. W. T. Williams, Geo. M. Holton, —— Fitzgerald, rooms 28 and 29 Temple block (third floor), Los Angeles, Cal., attorney- for —.

39 GENTLEMEN OF THE JURY: This case was submitted to you about 11.45 o'clock yesterday morning. Under ordinary circumstances, after a deliberation of nearly twenty-four hours without an agreement upon a verdict, the court would discharge you from further consideration of the case. If there was any conflict in the tes-

timony upon any point involved in the charge, the court would discharge you from its further consideration; but the testimony on the part of the Government is without conflict and there is no evidence upon the part of the defense at all. You, during your term of service as term-trial jurors, are a constituent part of this court of justice and you have taken an oath to well and truly try this case in accordance with the evidence introduced before you and the law as given to you by the court. While, as the court has already instructed you, the defendants are by the law presumed to be innocent of the charge against them and the burden of establishing their guilt rests upon the prosecution beyond a reasonable doubt, and you are to give the defendants the benefit of any reasonable doubt that you entertain in respect to their guilt, you have not the right to arbitrarily reject sworn testimony and written evidence given in a court of justice, and any juror who does so arbitrarily disregard such testimony violates his oath of office and his duty as a good citizen. The court therefore instructs you to again retire to your room and carefully consider the evidence that has been introduced before you and the instructions that the court has already given to you in writing. If, after such thorough and careful consideration, you entertain any reasonable doubt of the guilt of the defendants or either of them, acquit the defendant or defendants as to whom you have such doubt; but if, after such careful consideration of the evidence and of the law as given to you by the court, your conscientious conviction is that the charge alleged in the indictment is established, your sworn and imperative duty is to render your verdict accordingly.

(Endorsed:) No. 640. U. S. district court, southern district of California. United States of America *vs.* W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood. Instructions given by the court. Filed November 21, 1894. E. H. Owen, clerk.

In the District Court of the United States in and for the Southern District of California.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD. } No. 640.

We, the jury in the above-entitled cause, find the defendants, W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood, guilty as charged in the indictment.

LEOPOLD SANDERS, *Foreman.*

Los Angeles, Nov. 21, 1894.

(Endorsed:) No. 640. U. S. district court, southern district of California. United States of America *vs.* W. H. Clune, A. T. Johnson, Isaac Ross, and Phillip Stanwood. Verdict. Filed November 21st, 1894. E. H. Owen, clerk.

42 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 26th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special assistant U. S. attorney, present for the Government; defendants each in court in custody of the U. S. marshal, with their attorneys, W. T. Williams, Esq., and G. M. Holton, Esq.

On motion of W. T. Williams, Esq., it is ordered that the name of Johnston Jones, Esq., be entered as associate counsel herein. This being the time fixed for the sentence of defendants, now, on motion of defendants' attorneys, and with the consent of the U. S. attorney, it is ordered that the sentence of defendants herein be postponed and continued until December 6th, 1894, at 10.30 o'clock a. m. Defendants are remanded.

43 In the District Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES *vs.* W. H. CLUNE *et al.*	No. 640.

The defendants move the court to arrest the judgment herein, and that no judgment be pronounced against them on the verdict of guilty found by the jury and now of record herein on the following grounds, to wit:

That the facts stated in the said indictment do not constitute a public offence.

W. T. WILLIAMS,
GEO. M. HOLTON &
JOHNSTON JONES,
Attorneys for Defendants.

(Endorsed:) No. 640. In the district court of the United States, southern district of California. United States, plaintiff, *vs.* W. H. Clune *et als.*, defendants. Motion in arrest of judgment. Filed Dec. 6th, 1894. E. H. Owen, clerk. W. T. Williams, Geo. M. Holton, —— Jones, rooms 28 and 29 Temple block (third floor), Los Angeles, Cal., attorneys for defendants.

44 In the District Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES
vs.
W. H. CLUNE *et al.* } No. 640.

The defendants move the court to vacate and set aside the verdict of the jury heretofore rendered against them in this cause and to grant them a new trial on the following grounds:

First. That the court has misdirected the jury in matters of law.

Second. That the court has erred in the decision of questions of law arising during the course of the trial.

Third. That the verdict is contrary to law.

Fourth. That the verdict is contrary to the evidence.

W. T. WILLIAMS,
GEO. M. HOLTON &
JOHNSTON JONES,
Attorneys for Defendants.

(Endorsed:) No. 640. In the district court of the United States, southern district of California. United States, plaintiff, *vs.* W. H. Clune *et als.*, defendants. Motion for a new trial. Filed Dec. 6th, 1894. E. H. Owen, clerk. W. T. Williams, Geo. M. Holton, and —— Jones, rooms 28 and 29 Temple block (third floor), Los Angeles, Cal., attorneys for defendants.

45 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Thursday, the 6th day of December, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD. } No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, and J. H. Call, Esq., special assistant U. S. attorney, present for the Government; the defendants in court, in custody of the U. S. marshal, with their attorneys, G. M. Holton, Esq., W. T. Williams, Esq., and Johnston Jones, Esq.

This being the time fixed for the sentence of defendants, now comes George M. Holton, Esq., and presents and files a motion in arrest of judgment and a motion for a new trial upon the grounds as set forth in said written motions, which motions are argued by George M. Holton, Esq., and W. T. Williams, Esq., and, upon motion of Johnston Jones, Esq., further argument on said motions is

continued until 1.30 p. m. of this day in order that he may obtain the reporter's transcript of the testimony in this cause.

Now comes the U. S. attorney and reads to the court
46 a written request of defendant A. T. Johnson, stating that he does not wish to be included in the motions above set forth in arrest of judgment and for a new trial and asking that his sentence be now imposed. Defendant, upon being asked if such is his desire, replies that it is. Thereupon it is now ordered by the court that the said defendant, A. T. Johnson, be, and he is, sentenced to pay a fine of one dollar, and that he be imprisoned in the county jail of Los Angeles county, California, for the term of eighteen (18) months. The defendants are then remanded. At 1.30 p. m. court reconvenes. The respective parties are present as hereinbefore stated. Thereupon argument is had by Johnston Jones, Esq., for defendants Clune, Ross, and Stanwood upon said motions in arrest of judgment and for a new trial, and the matter is submitted to the court for its consideration and decision, and the court, having fully considered the same, now orders that said motions be denied; to which ruling of the court defendants except. Defendants are called for sentence, and W. T. Williams, Esq., makes a statement in mitigation of the sentence of the defendants and asks that they be imprisoned in the county jail of Los Angeles county and not in the State's prison, and the U. S. attorney joins in said request. Thereupon it is by the court ordered that each of said defendants, W. H. Clune, Isaac Ross, and Phillip Stanwood, pay a fine of one dollar, and that they each be imprisoned in the county jail of Los Angeles county, California, for the term of eighteen (18) months. Defendants are then remanded. To all of which defendants except.

47 In the District Court of the United States in and for the Southern District of California.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640.

I, E. H. Owen, clerk of the district court of the United States in and for the southern district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment-roll in the above-entitled cause.

[SEAL.] Attest my hand and the seal of said court this 8th day of December, A. D. 1894.

E. H. OWEN, *Clerk.*

(Endorsed:) No. 640. U. S. district court, southern district of California. United States of America *vs.* W. H. Clune *et al.* Judgment-roll. Filed Dec. 8th, 1894. E. H. Owen, clerk.

48 In the District Court of the United States for the Southern District of California.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE *et al.* } No. 640.

UNITED STATES OF AMERICA
vs.
W. H. CLUNE *et al.* } No. 641.

UNITED STATES OF AMERICA
vs.
C. T. BUCHANAN *et al.* } No. 642.

UNITED STATES OF AMERICA
vs.
C. T. BUCHANAN *et al.* } No. 643.

The grand jury which returned the indictments in these cases was impaneled prior to the commission of the offenses which constitute the subject of the indictments, so that the defendants could not have been held to answer for the alleged offenses prior to the impaneling of the jury. The question which they seek to raise by the motions to quash the indictments is a challenge to the personnel of the grand jury. There are no provisions of the United
49 States statutes regulating challenges to such jurors under such circumstances, and it is therefore proper for the Federal court to follow the practice of the courts of the State in which it is held with reference to such objections. U. S. *vs.* Egan, 30 Fed. Rep., 608. A motion to quash the indictment is a proper mode by which to present the question. U. S. *vs.* Gale *et al.*, 109 U. S., 65.

In California it is provided by statute that a challenge to an individual grand juror may be interposed for the cause, among other causes, "that a state of mind exists on his part in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him" (Penal Code, sec. 896; and by section 995 of the same code it is provided as follows:

"The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases. If it be an indictment:

* * * * * * *

"4. When the defendant had not been held to answer before the finding of the indictment on any ground which would have been

good ground for challenge either to the panel or to any individual grand juror."

50 The meaning of this clause, taken in connection with the other provisions of the State statute referred to, is that the defendant shall have the privilege of challenge on arraignment when from the nature of things he could not have had it at the impaneling of the jury. People *vs.* Beaty, 14 Cal., 571. Accordingly the defendants in these cases were, by their counsel, permitted to inquire into the state of mind of the grand jurors in reference to the case alleged against the defendants and to give evidence in respect thereto.

A careful consideration of the evidence satisfies me that none of the grand jurors were in a state of mind in reference to the charges against the defendants in these cases which prevented them from acting impartially and without prejudice to the substantial rights of the parties challenging. The various opinions and impressions of the grand jurors were not of such a character as to prevent a perfectly impartial and fair consideration of the charges against the defendants, and each of them testified that his mind was in such a condition that he could and that he in fact did act impartially and fairly upon the matters submitted to him in respect to the charges, notwithstanding such opinions or impressions as he may have had. The remark made by the juror Sweet a day or two after the finding and presentation of the indictments in the course of a discussion with some third parties, that "the strikers should be filled full of lead," specially relied upon by the counsel for the defend-

51 ants as showing a state of mind on the part of that juror which rendered him prejudiced and unfair, while highly improper on the part of a grand juror at any time or under any circumstances, was made subsequent to the finding and presentation of the indictments in question and after some of the men engaged in the strike had wantonly destroyed private property; and the testimony of the juror Sweet (in which he is corroborated by the witness Jeffreys) is that what he said was in substance that the strikers who engaged in the destruction of private property ought to be filled full of lead. It is true that two witnesses—Perkins and Hollenbeck—in effect denied that Sweet made that qualification; but I think it very improbable that any reasonable person would say that a man should be shot for exercising his right to strike or stop work. The probabilities are all in favor of the truth of Sweet's testimony that he made the remark with reference only to those strikers who should engage in the destruction of private property. This conclusion finds strong support in the fact that pending the investigation by the grand jury of the charges which culminated in part in the indictments in question the juror Sweet propounded questions in writing to the court, asking its instructions in respect to the law, which questions indicated to the court a decided sympathy on the part of the juror with the strikers. This was prior to the occurrence which forms the principal ground of the motions and is corroborative of the testimony of the juror Sweet given on the hearing of the motions, which, for the reasons stated, I find to be true.

52 There is a marked distinction between a grand juror who merely makes an accusation of the commission of a crime and a petit juror who tries the question of the guilt or innocence of the defendant who is so accused. it is accordingly held in many jurisdictions that it is no objection to the validity of an indictment that one or more of the grand jurors who was otherwise qualified had formed or expressed an opinion of the guilt of the accused. Tucker's case, 8 Mass., 286; State *vs.* Hamlin, 47 Conn., 95, 114; State *vs.* Chairs, 9 Baxt., 196; Musick *vs.* People, 40 Ill., 268; Lee *vs.* Georgia, 69 Ga., 705; U. S. *vs.* Williams, 1 Dill., 485.

In a late case in the supreme judicial court of Massachusetts (Com. *vs.* Woodward, 32 Northeastern Rep., 939) it was held that the fact that a grand juror who was otherwise competent and qualified to serve had before the meeting of the grand jury made a personal investigation into the guilt of the accused, and had secreted himself in a room with an officer for the purpose of listening to declarations and admissions made by the accused concerning the crime, and had heard such declarations and admissions, and had listened to statements of officers to the effect that the accused was guilty, and had thereupon formed an opinion and believed him to be guilty before and at the time of the investigation of the case by the grand jury, did not constitute a legal objection to the validity of the indictment, the court saying, among other things, "This opinion is in accordance with what appears to us to be the clear weight of judicial decision elsewhere, though in some instances views to the contrary have been held."

53 In Rolland *vs.* Com., 82 Pa. State, 306, it was held to be no ground for quashing an indictment for burglary in breaking into a bank that two of the grand jurors by whom it was found were stockholders of the bank; and in State *vs.* Eastern, 30 Ohio State, 542, it was held not a good plea to an indictment for murder that a member of the grand jury which found it was a nephew of the murdered man.

These authorities are cited to emphasize the distinction that exists between grand and petit jurors.

For the reasons stated the court is of the opinion that none of the grand jurors in question in these cases were in such a state of mind as prevented them from acting impartially and fairly in respect to the charges against the defendants. The motions to quash are therefore denied.

ROSS, *Dist. Judge.*

(Endorsed:) Nos. 640, '41, '42, '43. U. S. district court, so. dist. of California. United States *vs.* W. H. Clune *et al.*, No. 640; United States *vs.* W. H. Clune *et al.*, 641; United States *vs.* C. T. Buchanan *et al.*, No. 642; United States *vs.* C. T. Buchanan *et al.*, No. 643. Opinion. Filed July 16th, 1894. E. H. Owen, clerk.

54 In the District Court of the United States, Southern District of California.

UNITED STATES
vs.
W. H. CLUNE, ISAAC ROSS, and PHILIP STANWOOD.

To George J. Denis, United States district attorney in and for the southern district of California, and to the clerk of said court:

Take Notice

The above-named defendants hereby appeal to the Supreme Court of the United States from the judgment made and entered herein against them on the 6th day of December, 1894; also from the order of the court denying defendants' motion in arrest of judgment herein; also from the order of the court denying defendants' motion for a new trial herein.

JOHNSTONE JONES,
W. T. WILLIAMS, &
GEO. M. HOLTON,
Attorneys for Defendants.

(Endorsed:) No. 640. In the United States district court, southern district of California. United States, plaintiff, *vs.* W. H.
55 Clune *et als.*, defendants. Notice of appeal. Filed Dec. 7, 1894. E. H. Owen, clerk. Service of the within notice of appeal is hereby admitted this 7th day of December, 1894. George J. Denis & Jos. H. Call, for U. S. Johnstone Jones, W. T. Williams, and Geo. M. Holton, rooms 28 and 29 Temple block (third floor), Los Angeles, Cal., attorneys for def'ts & appellants.

56 At a stated term, to wit, the January term, A. D. 1894, of the district court of the United States in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Friday, the 7th day of December, A. D. 1894.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA *vs.* W. H. CLUNE, A. T. JOHNSON, ISAAC ROSS, and PHILLIP STANWOOD.	No. 640. Violation of Sec. 5440, R. S.

George J. Denis, Esq., U. S. attorney, present for the Government; W. T. Williams, Esq., and Johnstone Jones appearing for defendants.

The above-named defendants, by their attorneys, W. T. Williams, Esq., and Johnstone Jones, Esq., having, this 7th day of December, 1894, filed their notice of and prayed for an appeal to the Supreme Court of the United States from the judgment made and entered herein against them on the 6th day of December, 1894, and also from the order of the court denying defendants' motion in arrest of judgment, and the order of the court denying defendants' motion

for a new trial made and entered herein on said 6th day of December, 1894, and it appearing to the court that the defendants are entitled to an allowance of appeal, they having taken their appeal within the time allowed by law, it is ordered that the said defendants be, and hereby are, permitted and allowed to prosecute
57 an appeal to the Supreme Court of the United States from the said judgment and orders made and entered aforesaid.

Upon motion of George J. Denis, Esq., U. S. attorney, it is further ordered that the bonds of the said defendants be fixed in the sum of five thousand (5,000) dollars each, pending their appeal herein.

58 (Original.)

In the District Court of the United States for the Southern District of California.

UNITED STATES, Plaintiff, *vs.* W. H. CLUNE, ISAAC ROSS, and PHILIP STANWOOD, Defendants.	At Law.	Petition for Writ of Error.

And now comes W. H. Clune, Isaac Ross, and Philip Stanwood, defendants herein, and say that on or about the sixth day of December, 1894, the district court of the United States for the southern district of California pronounced or rendered judgment herein in favor of the plaintiff and against these defendants on the verdict of guilty found by the jury and now of record herein, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these defendants pray that a writ of error may issue in this behalf to the district court of the United States for the southern district of California for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers
59 in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JOHNSTONE JONES,
GEO. M. HOLTON,
W. T. WILLIAMS,
Attorneys for Defendants.

(Endorsed:) Original. No. 640. In the U. S. district court for the southern district of Calif. United States, plaintiff, *vs.* W. H. Clune *et al.*, defendants. Petition for writ of error. Rec'd copy of within this 17 day of Dec., 1894. Denis, attorney for U. S. Filed December 17th, 1894. E. H. Owen, clerk. W. T. Williams, Geo. M. Holton, Johnstone Jones, attorneys for defendants, room 6 Law building, Temple street, Los Angeles, Cal.

60 (Original.)

In the District Court of the United States for the Southern District of California.

UNITED STATES, Plaintiff, vs. W. H. CLUNE, ISAAC ROSS, and PHILLIP STANWOOD, Defendants.	At Law. Assignment of Errors.

The defendants, W. H. Clune, Isaac Ross, and Philip Stanwood, in this action, in connection with their petition for a writ of error, make the following assignment of errors, which they aver occurred upon the trial of the cause, to wit:

1. The court erred in the admission of evidence offered by the plaintiff in the following instance, to wit:

(1.) In the admission of the testimony given by JAMES W. ERWIN, a witness in behalf of the Government, in substance as follows: The witness, in the month of June, 1894, was a United States post-office inspector; he arrived in Los Angeles on the morning on the 27th of June and started to go to San Francisco on passenger train No. 18, Southern Pacific R. R., scheduled to leave the Arcade depot at 2 p. m. that day. Witness went to the Arcade depot, belonging to the Southern Pacific Company, in the city of Los Angeles, about 2 p. m. to take the train. Witness was then asked by Mr. Denis, attorney for the plaintiff—

"Question. Did you take the train that day?

61 "Answer. I did, sir.

"Mr. WILLIAMS: Are you speaking now of the 27th (of June)?

"Answer. The 27th; yes, sir.

"Mr. WILLIAMS: I object as incompetent, irrelevant, and immaterial. It is not directed to the issue here; it charges the 28th of June.

"The COURT: The objection overruled.

"Mr. WILLIAMS: We except."

The witness proceeded to state that he went into the mail car; the train left the depot a little late and proceeded as far as River station or San Fernando street, and there it stopped. There was United States mail in the postal car. Witness was still in the mail car when a crowd of people collected around the locomotive of the train, and two men, whom witness did not know, addressed themselves to the fireman, begging him not to go out on the locomotive, and threatened him if he did go. Most of the talking was done by a man named Gallagher, who called the first man a "scab," and said to him, "If you go out today you will make a big mistake and you will regret it." The witness about that time stepped up and introduced himself as the post-office inspector, and said there was a quantity of United States mail in the postal car and warned them if the train did not go out they would be responsible for it. They *they*

desisted from talking with the fireman and moved back a little ways, but one of them, the one who had done the most talking, beckoned several times to the fireman, who finally threw down his gloves, and the train did not go out.

"By Mr. DENIS:

62 "Question. State a little more fully, Mr. Erwin, what was said by these number of men to the fireman and these number of men who were standing around the locomotive.

"Mr. WILLIAMS: Objected to as incompetent and irrelevant.

"The COURT: The objection is overruled.

"By Mr. DENIS:

"Q. What were the expressions used, so far as you can recollect?

"Mr. WILLIAMS: Save the exception."

The witness did not see any of the defendants at the time of this occurrence at River station on June 27th.

The witness was asked by Mr. Williams what was his opinion as to what constituted a mail train before witness commenced a discussion with the defendants. Witness answered that any regular train sent out by the railroad company upon which the Postmaster General or any of his subordinates might wish to have the mail carried was a mail train, no matter what it consisted of—cattle cars, postal cars, or freight cars—no matter what kind.

"By Mr. WILLIAMS:

"Question. Had the Postmaster General at that time designated any particular cars as mail cars?

"Answer No, sir.

"Q. Are you sure that on June 28th the Postmaster General had issued his order designating what constituted a mail train?

"A. Yes, sir.

"Mr. DENIS: I object to that on the ground it is incompetent; the designation of the Postmaster General is a law, being a regulation of which this court is bound to take judicial notice.

63 "The COURT: The court takes judicial notice, as I said this morning, of the statutes as laws or regulations of postal department, and treats them in the same light as statutes. Objection sustained.

"Mr. WILLIAMS: We except."

(2.) In the admission of documents read to the jury and marked respectively "Government Exhibits 3, 4, 5, 6," and filed in words and figures as follows, to wit:

EXHIBIT No. 3.

"L. A., 6, 28, 1894.

"To H. A. Knox, c. o. S. P. depot, Sacramento, Cal.:

"General tie-up ordered—advise all employees.

"W. H. CLUNE, *Sec'ty.*

"PHILIP STANWOOD, *Pres.*"

EXHIBIT No. 4.

"L. A., 6, 28, 1894.

"To E. V. Debs, 421 Ashland block, Chicago, Ills.:

"Southern Pacific arranged to run three trains, Pullman's, to-night,—board mediation ordered general tie-up—give us your sanction quick. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 5.

"L. A., CAL., 6, 30, 1894.

64 "To E. V. Debs, Ashland block, Chicago, Ills.:

"Situation unchanged—the S. P. all out. Answer mine of the twenty-eighth.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 6.

"L. A., 7, 4, 1894.

"To H. A. Knox, Sacramento, Cal., c. o. S. P. depot:

"Stand firm—all O K here. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

R. R. HAINES, a witness on behalf of the Government, testified that these several telegrams were received at the office of the Postal Telegraph & Cable Company, in the city of Los Angeles, in the due course of business and transmitted from that office.

Mr. Williams objected upon the ground that no sufficient grounds had been laid to establish any conspiracy, and that these several dispatches are the declarations of one of the conspirators, and as against the others it is not admissible, no conspiracy having been shown; that it was irrelevant, immaterial, and incompetent.

Mr. Holton made further objection on the ground that at least one of the telegrams was dated the fourth of July, long after this occurrence.

65 The court overruled the objection and stated that unless the Government connects all the defendants with the alleged conspiracy the court would instruct the jury to acquit them.

Exception.

(3.) In the admission of documents read to the jury and *am*rked and filed as Government's Exhibits Nos. 7 to 20, inclusive, in words and figures as follows, to wit:

EXHIBIT No. 7.

"Los A., *June 28th*, 1894.

"To George Dillinger, Dunsmuir, Cal.:

"General tie-up ordered—advise all employees. Sure to win.

"W. H. CLUNE, *Sec'ty.*

"PHILIP STANWOOD, *Pres.*"

Exhibits 8 to 18, inclusive, are the same message as No. 7, to wit: "General tie-up ordered—advise all employees. Sure to win." Dated at Los Angeles, June 28th, 1894, and signed W. H. Clune, sec't'y; Philip Stanwood, pres., and addressed, respectively, to the following persons:

Exhibit No. 8, to R. G. Evans, Benicia, Cal.
Exhibit No. 9, to J. M. Wagner, 3153 Pacific Ave., Ogden, Utah.
Exhibit No. 10, to Jas. Kennedy, Terrace, Utah.
Exhibit No. 11, to H. A. Rabarn, Bakersfield Station, Kern Co., Cal.
Exhibit No. 12, to James Nounally, Mojave, Cal.
Exhibit No. 13, to P. McInerny, Rocklin, Cal.
Exhibit No. 14, to G. W. Lindsey, Wadsworth, Nev.
66 Exhibit No. 15, to G. B. McClintock, Truckee, Cal.
Exhibit No. 16, to G. M. Rose, Winnemucca, Nev.
Exhibit No. 17, to Frank B. Porter, Reno, Nev.
Exhibit No. 18, to Chas. B. Kappler, Carlin, Nev.

EXHIBIT No. 19.

"LOS ANGELES, CAL., —— 29, 1894.

"To Barrett, Bakersfield:

"Have stopped train at Mojave, come to Los Angeles with engine and caboose.

"PHILIP STANWOOD."

EXHIBIT No. 20.

"L. A., 7, 10, 1894.

"To L. B. Hays, Tucson:

"No. nineteen and one freight train left here this morning—everybody on the train are 'scabs.' Hold them there. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

J. H. RAMBOZ, a witness called in behalf of the Government and the clerk in the Western Union telegraph office in the city of Los Angeles, identified these dispatches.

Mr. Williams made the same objections and the court the same ruling as in the matter of the introduction of Exhibits Nos. 3, 4, 5, and 6.

67 (4.) In the admission of a document read to the jury and marked and filed as Government Exhibit No. 21, in words and figures as follows, to wit:

EXHIBIT No. 21.

"JUNE 26, 1894.

"CHICAGO, ILLS., —— 26.

"W. H. Clune, 1844 Naud St., Los Angeles, Calif.:

"Boycott against Pullman cars in effect at noon today by order of convention.

"EUGENE V. DEBS."

The witness J. H. RAMBOZ testified that this paper is a copy of the message received at the office in the city of Los Angeles, and was delivered as addressed in the ordinary business way.

"By Mr. WILLIAMS:

"Question. Do you know, of your personal knowledge, that that message was delivered to anybody?

"Answer. No, sir; merely from the writing on the sheet.

"Q. Somebody else's writing?

"A. Yes, sir.

"Mr. WILLIAMS: We object to it as not having been shown to have been received by anybody, by the best evidence.

"By the COURT: Is that the ordinary course of business in the office?

"WITNESS: Yes, sir.

"The COURT: The objection is overruled.

"Mr. WILLIAMS: Exception.

68 "Mr. HOLTON: If your honor please, that is open to another objection. It has not been shown that that telegram has been received here.

"Mr. DENIS: This is the one Mr. Beardsley testified to as having been received at his office, in this city.

"The COURT (after argument): The court overrules the objection. You can take your exception, of course."

The document referred to was thereupon read to the jury by counsel for the Government and filed as Government's Exhibit No. 21.

(7.) In the admission of telegrams read to the jury and marked and filed as Government's Exhibits Nos. 22, 23, 24, and 25 respectively, in words and figures as follows, to wit:

EXHIBIT No. 22.

"LOS ANG., 7, 4, 1894.

"To L. B. Hays, Tucson, Ariz.:

"We are out irrespective of organizations—stand firm—none go back until all are reinstated—we have sympathy entire population—tried to advise you since start—keep us posted—sure to win.

"PHILIP STANWOOD, *Pres't.*

"[W. H. CLUNE, *Sec'ty.*"]*

EXHIBIT No. 23.

"LOS ANG., 7, 4, 1894.

"To P. E. Stilwagon, Iadio, Cal.:

69 "All solid here—and all points on system—Sunset out—Sure to win.

"W. H. CLUNE, *Sec'ty.*"

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 24.

"L. A., 7, 4, 1894.

"To Geo. Kuhns, El Paso, Tx.:

"Stay with the pot. Out here to a man. Los Angeles sends greeting to the Gate City—Sure to win.

"W. H. CLUNE, *Sec't'y.*"

EXHIBIT No. 25.

"L. A., 7, 20.

"To P. E. Stillwagon, Indio, Cal.:

"Good boy, outside of a few engineers we are solid in every department, nothing moving at Sacramento, Oakland, Bakersfield or Benicia. Sure to win.

"W. H. CLUNE, *Sec't'y.*"

Said documents were identified by the witness Ramboz as having been received at the main office for transmission.

Mr. Williams and Mr. Holton object, and the court overruled the objections upon the same grounds respectively as were made in respect to Exhibits 3 to 21, inclusive.

Exception.

(6.) In the admission of various documents read to the jury
70 and filed as Government's Exhibits 26, 27, 28, 29, 30, and 31 to 42, inclusive, in words and figures as follows, to wit:

EXHIBIT No. 26.

"LOS ANGELES, CAL., 6, 27, 1894.

"To G. T. Bishop, sec't'y A. R. U. 310, Oakland, Cal.:

"Stand firm, will boycott at Los Angeles this p. m.

Clune.

"W. H. (CLUNE), *Sect. u o* [*p o*]*

"[T. C. GALLAGHER,]* *Eighty.*"

EXHIBIT No. 27.

"L. A., 7, 10, 1894.

"To P. E. Stillwagon, Indio, Cal.:

"'Scabs' sneaked out of here this morning under protection of troops, one B. T. L. F. man out of entire membership 'scab-ed.' Hold them at Indio if they reach there. Freight train went out this a. m. under guise as relief train for desert, if not as represented hold them and wire us. All are solid at every point, all good men at their posts. Will win on lines laid down. Determined sure to win. All protected under our banner.

"W. H. CLUNE, *Sec't'y.*"

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 28.

"L. A., 7, 10, 1894.

"To L. B. Hayes, Tucson, Ariz:

71 "Freight and passenger train left here this morning under guard of troops in the guise as relief trains for desert manned by 'scabs.' Pay no attention to press reports. All points west of here solid to a man. Sure to win.

"W. H. CLUNE."

EXHIBIT No. 29.

"LOS ANGELES, CAL., 6, 28, 1894.

"To H. E. Hochenderfer, Albuquerque, N. M.:

"No Pullmans [cars being]* attached in any way entire system.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 30.

"LOS ANGELES, CAL., —— 28.

"To M. Taub, c. o. J. J., Houston, Tex.:

"No Pullmans attached in any way entire system.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

To the introduction of these several documents Mr. Williams made the same objections and the court the same rulings as in respect to Exhibits 3 to 25, inclusive.

Exception.

EXHIBIT No. 31.

"LOS ANGELES, CAL., *June* 27, 1894.

"To P. McInery, Oakland, Cal.:

"Everything at stand-still, carry on the good work.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

72 Exhibits 32 to 42, inclusive, are the same message as Exhibit 31, to wit: "Everything at stand-still, carry on the good work." Dated Los Angeles, June 27th, 1894, and signed P. Stanwood, pres.; W. H. Clune, sec'y, and said messages were addressed respectively to the following persons:

Exhibit 32, to J. F. Doughty, Sacramento, Cal.
Exhibit 33, to F. T. Hance, Needles, Cal.
Exhibit 34, to C. E. Strehle, San Diego, Cal.
Exhibit 35, to Henry Syversten, National City, Cal.

[* Words enclosed in brackets erased in copy.]

Exhibit 36, sec't'y A. R. U., Tucson, Az.
Exhibit 37, to R. G. Evans, Benicia, Cal.
Exhibit 38, to Geo. Dillinger, Dunsmuir, Cal.
Exhibit 39, to H. A. Raburn, Bakersfield, Cal.
Exhibit 40, to M. Taut, G. H. & T. A. shops, El Paso, Tex.
Exhibit 41, J. E. Riordan, San Francisco.
Exhibit 42, to C. B. McClintock, Truckee, Cal.

To the introduction of these several documents Mr. Williams made the same objections and the court the same rulings as in respect to Exhibits 3 to 25, inclusive.

Exception.

(7.) In the admission of a letter read to the jury and filed in evidence as Government's Exhibit No. 46, of which the following is a copy:

73 EXHIBIT No. 46.

"LOS ANGELES, CAL., 6, 28, 1894.

"D. B., Esq., sup't Mojave division; J. A. M., sup't L. A. division.

"GENTLEMEN: In regard to your request of this a. m. to our president, Mr. Stanwood, we beg to say that in view of the fact that the passengers now in the Arcade depot have, by petition to you, signified their willingness to go to their destination in day coaches, we cannot consistently grant your request.

"Respectfully yours, A. T. JOHNSON,
"*Sec'y Board Mediation.*

"Approved:
"Ch'man, —— ——.
"PHILIP STANWOOD.
"ISAAC ROSS."

Mr. Williams made the same objections and the court the same rulings as were made in respect to Exhibits 3 to 42, inclusive.

Exception.

(8.) In the testimony given by George Odell in substance as follows:

The witness was a conductor of passenger trains of the Southern Pacific Railway Company during the months of June and July, 1894. On June 27th he was conductor of passenger train
74 No. 18, which was a regular passenger train, made up of mail, combination of mail and baggage, express car, two coaches, smoker, tourists' car, and two sleepers. It was due to leave Los Angeles at 2 p. m. and was regularly made up and ready to depart at that hour on June 27th.

"By Mr. DENIS:

"Question. Describe fully what happened at the Arcade depot upon the leaving or immediately prior to the leaving of that train on the date named.

"Mr. WILLIAMS: Same objection, your honor.
"The COURT: Same ruling. Objection overruled.
"Mr. WILLIAMS: It appears to have been before the alleged offence was committed."

The witness proceeded, and testified that on the 27th of June, after ten or fifteen minutes' delay, the train left the Arcade depot and went as far as River station, and there the fireman and two brakemen were induced to leave the train. The delay sustained in the switching of the Pullman sleepers was occasioned by argument by Mr. Muir, the division superintendent of the Southern Pacific Railway Company, and the yardmaster with one Gallagher and one Buchanan.

"By Mr. DENIS:

"Question. Before leaving there did you hear any conversation between Gallagher and Buchanan and any member of the train crew?

"Mr. WILLIAMS: We object upon the ground that it is irrelevant, immaterial, and incompetent. There has been no conspiracy shown or that these parties were in any way connected with Gallagher and Buchanan, and the declarations of one conspirator not in the presence of another *is* not admissible.

75 "The COURT: Objection overruled.
"Mr. WILLIAMS: We except to the ruling.

"WITNESS:

"Answer. Gallagher was after the fireman. The fireman came back and spoke to me, and says, 'This man has made a demand; what will we do?" I told him I was going out and it was best to get back to his engine.
"Q. Did you hear Gallagher say anything to the fireman?

"Mr. WILLIAMS: Same objection.
"The COURT: Same ruling.
"Mr. WILLIAMS: Exception.

"WITNESS:

"A. He told the fireman he would be a 'scab' if he went out."

The witness went on to testify that at River station Mr. Gallagher got the fireman down; afterwards Gallagher called the fireman a "scab," a son of a bitch, and all kinds of names, and that train did not leave River station for its destination that day at all.

"By Mr. DENIS:

"Question. What is understood to be a 'scab,' Mr. Odell?

"Mr. WILLIAMS: I object to it as irrelevant, incompetent, and immaterial, and that it does not lie in the mouth of the witness to define the word 'scab.'
"THE COURT: Objection overruled.
"Mr. WILLIAMS: Except to the ruling."

Witness proceeded to define the word "scab" to mean a member of an organization who works notwithstanding a strike having been declared on.

"By Mr. DENIS:

"Question. How is he treated by his fellows?

76 "Mr. WILLIAMS: Objected to as irrelevant, immaterial, and incompetent.

"The COURT: I think it is competent to show that it is a term of opprobrium, if such it be. Objection overruled.

"Exception."

The witness testified on cross-examination that he never saw these defendants or any of them at the Arcade depot or at River station participating in the trouble at those places on the 27th of June or at all.

(9.) In the testimony of J. J. FINN, a witness in behalf of the Government, in substance as follows:

The witness was general yard master of the Southern Pacific Railway Company during the months of June and July, 1894. He is acquainted with the defendants. Mr. Clune was keeping a cigar store at the time of the strike, and was not in the employ of the Southern Pacific Company. Mr. Johnson was a brakeman on the Mojave division of the S. P. R. R. Mr. Stanwood worked in the yard crew on the section. Mr. Ross was a conductor on the Mojave division.

The witness was at the Arcade depot immediately prior to the departure of train No. 18 on the 27th of June. Five minutes before No. 18 was due to leave he went to River station. Said train did not leave River station that day.

Witness had charge of all trains going in and coming out of Los Angeles city on the Southern Pacific railroad, including passenger trains and regular mail trains, to see that they were properly made up.

77 The witness testified that after June 27th he had a conversation with the defendants and others in relation to the strike. The conversation was held at the corner of Sotello and San Fernando Sts.

"By Mr. DENIS:

"Question. Were any of these defendants there?

"Answer. Yes, sir.

"Q. All four of them?

"A. I am pretty sure all four of them were there.

"Q. State what happened at that time.

"Mr. HOLTON: When was that?

"WITNESS:

"A. It was the night of July 3rd, between ten and eleven o'clock.

"Mr. WILLIAMS: We object as irrelevant, incompetent, and immaterial, because it appears that the act had been consummated.

"Mr. DENIS: Before ruling on the objection I would like to ask one question.

"Question. Was the strike still on?

"A. Yes, sir.

"Q. Were the regular mail trains carrying mail at that time or had they ceased?

"A. There wasn't any trains running, sir.

"Q. And the strike was still pending?

"A. Yes, sir.

"Mr. DENIS: We insist upon our question, your honor.

"The COURT: I think it is competent. Objection overruled. Answer the question.

78 "Mr. WILLIAMS: Exception.

"A. Well, they asked me to go out with them."

(10.) In the testimony of WILLIAM STEWART, a witness in behalf of the Government, in substance as follows:

Witness was a locomotive engineer in the employ of the Southern Pacific Company on June 27th, 1894. He was to take out train No. 18 from the Arcade depot, a regular passenger train carrying United States mails.

He testified that he backed his engine down to couple on the Pullman cars. Gallagher and Buchannan tried to persuade him not to couple on to them. They said there had been a boycott declared that day at noon, and it would not be well to couple on. Gallagher said he had messages and dispatches that gave him authority to stop those cars being coupled on. He showed them to witness, but he did not read them off. The dispatches were addressed to W. H. Clune. One of them was from Bishop, of Oakland, or Rogers; the other was signed E. V. Debs.

"By Mr. DENIS:

"Question. (Showing witness Government Exhibit No. 21.) Will you look at that paper and state whether that was the dispatch?

"Answer. I would not swear that was the one, but it was similar to that—that is, the words.

"Q. The words were similar?

"A. Yes, sir.

"Mr. DENIS: Witness identifies Exhibit No. 21 as being in words the same as the dispatch which Gallagher showed to him on June 27th.

79 "Mr. WILLIAMS: I did not understand him to say in exact words. Did you?

"Question. Did you say that those are the words?

"Mr. DENIS: I didn't ask the exact words, Mr. Williams.

"WITNESS:

"Answer. I could not say those were the exact words, but it said the same; boycott was declared; boycott against Pullman cars, in effect at noon. It was the same message.

"Q. The same message, and was addressed to the same person, W. H. Clune, and signed by the same name, Eugene V. Debs?

"A. Yes, sir.

"Mr. WILLIAMS: I move to strike out the evidence unless they *they* show the existence of the dispatch. They cannot say there is a similar dispatch by introducing this one.

"The COURT: The motion is denied.

"Mr. WILLIAMS: We except to the ruling."

(2.) The court erred in using the following language in the charge to the jury:

"If there was any conflict in the testimony upon any point involved in the charge the court would discharge the jury from its further consideration, but the testimony on the part of the Government is without conflict and there is no evidence upon the part of the defendants at all. * * * You have not the right to arbitrarily reject sworn testimony and written evidence given in a court of justice, and any juror who does so arbitrarily disregard such testimony violates his oath of office and his duty as a good citizen."

80 These instructions were given to the jury after the jury had been out considering of their verdict for the space of 23 or 24 hours and when it appear- to the court that they had not agreed upon their verdict.

(3.) The court erred in reading to the jurors the following from the opinion of the court in the case of The United States *vs.* Clark, 13 Philadelphia, 476, to wit:

"It is a criminal offence to obstruct a mail train, although those guilty are willing to permit the passage of the mail car alone." This language was read to the jury on November 21st, and was excepted to by the defendants, as more fully appears by reference to the minutes of the court November 21st, 1894.

(4.) The court erred in overruling the motion of the defendants, W. H. Clune, Isaac Ross, and Philip Stanwood, for a new trial; which said motion was in words as follows:

"In the District Court of the United States, Ninth Circuit, Southern District of California.

"UNITED STATES *vs.* W. H. CLUNE *et al.* } No. 640.

"The defendants move the court to vacate and set aside the verdict of the jury heretofore rendered against them in this cause and to grant them a new trial on the following grounds:

"First. That the court has misdirected the jury in matters of law.

81 "Second. That the court has erred in the decision of questions of law arising during the course of the trial.

"Third. That the verdict is contrary to law.

"Fourth. That the verdict is contrary to the evidence.

"W. T. WILLIAMS,
"GEO. M. HOLTON,
"JOHNSTONE JONES,
Attorneys for Defendants."

(5.) The court erred in denying the motion of defendants, W. H. Clune, Isaac Ross, and Philip Stanwood, in arrest of judgment; which said motion was in the following words:

"In the District Court of the United States, Ninth Circuit, Southern District of California.

"UNITED STATES *vs.* W. H. CLUNE *et al.* } No. 640.

"The defendants move the court to arrest the judgment herein and that no judgment be pronounced against them on the verdict of guilty found by the jury and now of record herein on the following ground, to wit:

"That the facts stated in the said indictment do not constitute a public offence.

"W. T. WILLIAMS,
"GEO. M. HOLTON,
"JOHNSTONE JONES,
"*Attorneys for Defendants.*

82 (6.) The court erred in rendering or pronouncing judgment in favor of the plaintiff and against the defendants, W. H. Clune, Isaac Ross, and Philip Stanwood.

JOHNSTONE JONES,
W. T. WILLIAMS,
GEO. M. HOLTON,
Attorneys for Defendants."

(Original.) No. 640. In the U. S. district court for the southern district of California. United States, plaintiff, *vs.* W. H. Clune *et al.*, defendants. Assignment of errors. Rec'd copy of within this 17th day of Dec., 1894. Denis, attorney for U. S. Filed December 17th, 1894. E. H. Owen, clerk. Johnstone Jones, W. T. Williams, Geo. M. Holton, att'ys for defendants, room 6 Law building, Temple street, Los Angeles, Cal.

83 (Original.)

In the District Court of the United States for the Southern District of California.

UNITED STATES, Plaintiff, *vs.* W. H. CLUNE, ISAAC ROSS, and PHILLIP STANWOOD, Defendants.	At Law. Defendants' Bill of Exceptions.

Be it remembered that the motion of defendants, W. H. Clune, Isaac Ross, and Philip Stanwood, for a new trial herein came on regularly before the court for hearing and was heard on the 6th day of December, 1894, the United States appearing by the district attorney, Mr. George J. Denis, and Joseph H. Call, special assistant U. S. att'y, and the defendants in person and by Messrs. W. T. Williams, George M. Holton, and Johnston Jones, their attorneys.

Defendants moved the court to set aside the verdict of the jury given and recorded herein and moved for a new trial upon the following grounds, to wit:

1st. That the court has misdirected the jury in matters of law.

2nd. That the court has erred in the decision of matters of law arising during the course of the trial.

84 3rd. That the verdict is contrary to law.

4th. That the verdict is contrary to the evidence.

The defendants now specify the following particulars in which the evidence is insufficient to justify the verdict of the jury, to wit:

1st. That the verdict of the jury in finding the defendants guilty of conspiracy was not justified by the evidence.

2nd. That there was no evidence produced before the jury showing or tending to show that the defendants at the time and place mentioned in the indictment did feloniously, knowingly, or wilfully conspire, combine, confederate, or agree together to commit an offense against the laws of the United States, to wit, to obstruct or retard the passage of the mails of the United States upon any regular train of cars of the Southern Pacific Company.

3rd. There was no evidence introduced before the jury showing or tending to show that the defendants at the time and place mentioned in the indictment or at any time did knowingly, wilfully, or feloniously or at all obstruct or retard the passage of the mail of the United States in or upon any train of cars belonging to or operated by the said Southern Pacific Company.

4th. That there was no evidence introduced before the jury showing or tending to show that the defendants performed any act or acts alleged or proven with the intent to obstruct or retard the passage of the mails of the United States at the time and place alleged in the indictment or at all.

85 The defendants no specify the following errors occurring at the trial and excepted to by the defendants:

1st. The court erred in overruling the objection of the defendants to the following questions propounded to JAMES W. ERWIN, a witness in behalf of the plaintiff, to wit:

"By Mr. DENIS:

"Question. Did you take the train that day?
"Answer. I did, sir.
"Mr. WILLIAMS: Are you speaking now of the 27th of June?
"Answer. Of the 27th; yes, sir.
"Mr. WILLIAMS: I object as incompetent, irrelevant, and immaterial. It is not directed to the issues here. It charges the 28th of June.
"The COURT: The objection is overruled.
"Mr. WILLIAMS: We except."

And further:

"By Mr. DENIS:

"Question. State a little more fully, Mr. Erwin, what was said by these number of men to the foreman and these number of men who were standing around the locomotive.
"Mr. WILLIAMS: Objected to as incompetent and irrelevant.
"The COURT: The objection is overruled.

"By Mr. DENIS:

"Q. What were the expressions used, so far as you can recollect?
"Mr. WILLIAMS: Save the exception.

2nd. The court erred in sustaining the objection of the plaintiff to the following questions propounded to JAMES W. ERWIN, a witness in behalf of the plaintiff:

86 "By Mr. WILLIAMS:

"Q. Had the Postmaster General at that time designated any particular cars as mail cars?
"Answer. No, sir.
"Question. Are you sure that on June 28th the Postmaster General had issued his order designating what constituted a mail train?
"Answer. Yes, sir.

"Mr. DENIS: I object to that on the ground that it is incompetent; the designation of the Postmaster General is a law, being a regulation of which this court is bound to take judicial notice.
"The COURT: The court takes judicial notice, as I said this morning, of the statutes as laws or regulations of postal department and treats them in the same light as statutes. Objection sustained.
"Mr. WILLIAMS: We except."

3rd. The court erred in admitting in evidence the four certain papers as testified to by the witness R. R. Haines and filed as Government Exhibits Nos. 3, 4, 5, and 6, in words and figures as follows, to wit:

EXHIBIT No. 3.

"L. A., 6, 28, 1894.

"To H. A. Knox, c. o. S. P. depot, Sacramento, Cal.:

"General tie-up ordered—advise all employees.

"W. H. CLUNE, *Sec'ty.*

"PHILLIP STANWOOD, *Pres.*"

87 EXHIBIT No. 4.

"L. A., 6, 28, 1894.

"To E. V. Debs, 421 Ashland block, Chicago, Ill.:

"Southern Pacific arranged to run three trains, Pullmans, to-night—board mediation ordered general tie-up—give us your sanction quick. Sure to wit.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 5.

"L. A., CAL., 6, 30, 1894.

"To E. V. Debs, Ashland block, Chicago, Ill.:

"Situation unchanged—the S. P. all out. Answer mine of the twenty-eighth.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 6.

"L. A., 7, 4, 1894.

"To H. A. Knox, Sacramento, Cal., c. o. S. P. depot:

"Stand firm—all O K. here. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

4th. The court erred in admitting in evidence certain documents offered by the plaintiff and filed as Government exhibits numbered 7 to 20, inclusive, and 21 and 22 to 25, inclusive, and 26 to 30, inclusive, and 31 to 42, inclusive, and 46; which several exhibits are in words and figures as follows, to wit:

88 EXHIBIT No. 7.

"Los A., *June 28th*, 1894.

"To George Dillinger, Dunsmuir, Cal.:

"General tie-up ordered—advise all employees. Sure to win.

"W. H. CLUNE, *Sec'ty.*

"PHILIP STANWOOD, *Pres.*"

Exhibits 8 to 16, inclusive, are the same as No. 7, to wit: "General tie-up ordered—advise all employees sure to win." Dated at Los Angeles, June 28th, 1894, and signed W. H. Clune, sec'ty; Philip Stanwood, pres., and addressed, respectively, to the following persons:

Exhibit No. 8, to R. C. Evans, Benicia, Cal.
Exhibit No. 9, to J. M. Wagner, 3153 Pacific Ave., Ogden, Utah.
Exhibit No. 10, to Jas. Kennedy, Terrace, Utah.
Exhibit No. 11, to H. A. Raburn, Bakersfield Station, Kern Co., Cal.
Exhibit No. 12, to James Nounally, Mojave, Cal.
Exhibit No. 13, to P. McInerny, Rocklin, Cal.
Exhibit No. 14, to C. W. Lindsey, Wadsworth, Nev.
Exhibit No. 15, to C. D. McClintock, Truckee, Cal.
Exhibit No. 16, to C. M. Rose, Winnemucca, Nev.
Exhibit No. 17, to Frank B. Porter, Reno, Nev.
Exhibit No. 18, to Chas. B. Kappler, Carlin, Nev.

EXHIBIT No. 19.

"LOS ANGELES, CAL., —— 29, 1894.

89 "To Barrett, Bakersfield:

"Have stopped train at Mojave, comes to Los Angeles with engine and caboose.

"PHILIP STANWOOD."

EXHIBIT No. 20.

"L. A., 7, 10, 1894.

"To L. B. Hays, Tucson:

"No. nineteen and one freight train left here this morning—everybody on the train are 'scabs.' Hold them there. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 21.

"JUNE 26, 1894.
"CHICAGO, ILLS.

"W. H. Clune, 1844 Naud St., Los Angeles, Calif.:

"Boycott against Pullman cars in effect at noon today by order of convention.

"EUGENE V. DEBS."

EXHIBIT No. 22.

"LOS ANG., 7, 4, 1894.

"To L. B. Hays, Tucson, Ariz:

"We are out irrespective of organizations—stand firm—none go back until all are reinstated—we have sympathy entire population—tried to advise you since start—keep us posted—sure to win.

90 "PHILIP STANWOOD, *Pres't.*
"[W. H. CLUNE, *Sec'y.*]"*

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 23.

"LOS ANG., 7, 4, 1894.

"To P. E. Stilwagon, Indio, Cal.:

"All solid here—and all points on system—Sunset out—sure to win.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 24.

"L. A., 7, 4, 1894.

"Geo. Kuhns, El Paso, Tx.:

"Stay with the pot. Out here to a man. Los Angeles sends greeting to the Gate City—sure to win.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 25.

"L. A., 7, 20.

"To P. E. Stillwagon, Indio, Cal.:

"Good boy, outside of a few engineers we are solid in every department, nothing moving at Sacramento, Oakland, Bakersfield or Benicia. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

91 EXHIBIT No. 26.

"LOS ANGELES, CAL., 6, 27, 1894.

"To G. T. Bishop, sec'ty A. R. U., 310, Oakland, Cal.:

"Stand firm, will boycott at Los Angeles this p. m.

Clune.

W. H. (CLUNE), *Sect. n. o.* [*p. o.*]*
[T. C. GALLAGHER.]* *Eighty.*"

EXHIBIT No. 27.

"L. A., 7, 10, 1894.

"To P. E. Stillwagon, Indio, Cal.:

"'Scabs' sneaked out of here this morning under protection of troops, one B. T. L. F. man out of entire membership 'scab-ed.' Hold them at Indio if they reach there. Freight train went out this a. m. under guise as relief train for desert, if not as represented hold them and wire us. All are solid at every point, all good men at their posts. Will win on lines laid down. Determined sure to win. All protected under our banner.

"W. H. CLUNE, *Sec'ty.*"

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 28.

"L. A., 7, 10, 1894.

"To L. B. Hayes, Tucson, Ariz.:

"Freight and passenger train left here this morning under guard of troops in the guise as relief trains for desert manned
92 by 'scabs.' Pay no attention to press reports. All -oints went of here solid to a man. Sure to win.

"W. H. CLUNE."

EXHIBIT No. 29.

"LOS ANGELES, CAL., 6, 28, 1894.

"To H. E. Hochenderfer, Albuquerque, N. M.:

"No Pullman [cars being]* attached in any way entire system.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 30.

"LOS ANGELES, CAL., —— 28.

"To M. Taub, c. o. J. J., Houston, Tex.:

"No Pullmans attached in any way entire system.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 31.

"LOS ANGELES, CAL., *June* 27, 1894.

"To P. McInery, Oakland, Cal.:

"Everything at stand-still, carry on the good work.

"PHILIP STANWOOD, *Pres.*
"W. H. CLUNE, *Sec'ty.*"

93 Exhibits Nos. 32 to 42, inclusive, are the same message as Exhibit 31, to wit, "Everything at stand-still, carry on the good work," dated Los Angeles, June 27th, 1894, and signed P. Stanwood, pres.; W. H. Clune, sec'ty; and said messages were addressed, respectively, to the following persons:

Exhibit 32, to J. F. Doughty, Sacramento, Cal.
Exhibit 33, to F. T. Hance, Needles, Cal.
Exhibit 34, to C. E. Strehle, San Diego, Cal.
Exhibit 35, to Henry Syversten, National City, Cal.
Exhibit 36, to sec'ty A. R. U., Tucson, Ariz.
Exhibit 37, to R. G. Evans, Benicia, Cal.
Exhibit 38, to Geo. Dillinger, Dunsmuir, Cal.
Exhibit 39, to H. A. Raburn, Bakersfield, Cal.
Exhibit 40, to M. Taut, C., H. & T. A. shops, El Paso, Tex.
Exhibit 41, to J. E. Riordan, San Francisco.
Exhibit 42, to C. B. McClintock, Truckee, Cal.

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 46.

"LOS ANGELES, CAL., 6, 28, 1894.

"D. B., Esq., sup't Mojave division; J. A. M., sup't L. A. division:

"GENTLEMEN: In regard to your request of this a. m. to our president, Mr. Stanwood, we beg to say that in view of the fact
94 that the passengers now in the Arcade depot have by petition to you signified their willingness to go to their destination in day coaches we cannot consistently grant your request.

"Respectfully yours, A. T. JOHNSON,
"*Sec'y Board Mediation.*"

"Approved:
"—— ——, *Ch'man.*
"PHILIP STANWOOD.
"ISAAC ROSS."

5th. The court erred in overruling the objection of the defendants to the following question propounded by the plaintiff to the witness GEO. H. ODELL:

"By Mr. DENIS:

"Q. Was train No. 18 regularly made up and ready to leave this city on the 27th of June of this year?

"A. Yes, sir.

"Q. Describe fully what happened at the Arcade depot upon the leaving or immediately prior to the leaving of that train on the date named.

"Mr. WILLIAMS: Same objection, your honor.

"The COURT: Same ruling. Objection overruled.

"Mr. WILLIAMS: Exception.

"By Mr. DENIS:

"Q. Before leaving the Arcade depot did you hear any conversation between Gallagher and Buchanan and any member of the train crew?

"Mr. WILLIAMS: We object upon the ground that it is
95 irrelevant and immaterial and incompetent. There has no conspiracy been shown or that these parties were in any way connected with Gallagher and Buchanan, and the declarations of one conspirator not in the presence of another is not admissible.

"The COURT: Objection overruled.

"Mr. WILLIAMS: We except to the ruling.

"Answer. Gallagher was after the fireman. The fireman came back and spoke to me. He says, 'This man has made a deman-; what will we do?' I told him I was going out and it was best to get back on his engine.

"Q. Did you hear Gallagher say anything to the fireman?

"Mr. WILLIAMS: Same objection.
"The COURT: Same ruling.
"Mr. WILLIAMS: Same exception.

"Answer. He told the fireman he would be a scab if he went out."
"Q. What is understood to be a scab, Mr. Odell?

"Mr. WILLIAMS: I object to it as irrelevant, incompetent, and immaterial; and it doesn't lie in the mouth of the witness to define the word 'scab.'
"The COURT: Objection overruled.
"Mr. WILLIAMS: It is a word of general meaning; people understand what it means. Except to the ruling.

"Q. How is he treated by his fellows?

"Mr. WILLIAMS: Objected — as irrelevant, immaterial, and incompetent.
"The COURT: I think it is competent to show that it is
96 a term of opprobri-m, if such it be. Objection overruled.
"Mr. WILLIAMS: Exception."

6th. The court erred in overruling the objection of the defendants to the following question- propounded to the witness J. J. Finn by the plaintiff:

"Q. State what happened at that time.
"Mr. HOLTON: When was that?

"By Mr. DENIS:

"Q. Well, when was that, Mr. Finn?
"A. It was the night of July 3rd, between ten and eleven o'clock.

"Mr. WILLIAMS: We object as irrelevant, incompetent, and immaterial, because it appears that the act had been consummated.
"Mr. DENIS: Before ruling on the objection I would like to ask one question:

"Q. Was the strike still on?
"A. Yes, sir.
"Q. Were the regular mail trains carrying the mails at that time or had that ceased?
"A. There wasn't no trains running, sir.
"Q. And the strike was still pending?
"A. Yes, sir.

"Mr. DENIS: We insist upon our question, your honor.
"The COURT: I think it is competent. Objection overruled. Answer the question.
"Mr. WILLIAMS: Exception."

97 7th. The court erred in refusing to strike out the testimony of the witness William Stewart relating to admission of document Government's Exhibit No. 21, as follows:

EXHIBIT No. 21.

"JUNE 26, 1894.
"CHICAGO, ILL'S, —— 26.

"W. H. Clune, 1844 Naud St., Los Angeles, Calif.:

"Boycott against Pullman cars in effect at noon today by order of convention.

"EUGENE V. DEBS."

"By Mr. DENIS:

"Q. (Showing witness Government Exhibit Number 21.) Will you look at that paper and state whether that was the dispatch?

"A. I wouldn't swear that was the one, but it was similar to that—that is, the words.

"Q. The words were similar?

"A. Yes.

"Mr. DENIS: Witness identified Exhibit 21 as being in words the same as the dispatch which Gallagher showed to him on June 27th.

"Mr. WILLIAMS: I don't understand him to say in exact words; do you?

"Q. Do you say that those were the words?

"Mr. DENIS: I didn't ask exact words, Mr. Williams.

"A. I couldn't say those were the exact words, but it said
98 the same. Boycott was declared; boycott against Pullman cars in effect at noon. It was the same message.

"Q. The same message, and was addressed to the same person, W. H. Clune, and signed by the same name, Eugene V. Debs?

"A. Yes.

"Mr. WILLIAMS: I move to strike out the evidence unless they show the existence of the dispatch. They can't say there is a similar dispatch by introducing this one.

"The COURT: The motion is denied.

"Mr. WILLIAMS: We except to the ruling."

8th. The court erred in overruling the objection of the defendants to the following question propounded to the witness George E. Lewis by the plaintiff:

"By Mr. DENIS:

"Q. Would it have any effect upon his character to be called a 'scab'?

"A. Yes; it would.

"Mr. WILLIAMS: I object as incompetent, irrelevant, and immaterial.

"The COURT: Objection overruled.

"Mr. WILLIAMS: Exception to the ruling."

99 This motion for a new trial was heard upon the minutes of the trial and the evidence taken on said trial and the de-

fendants' exception in connection therewith and the rulings of the court thereon.

The following witnesses were called and sworn and testified upon behalf of the plaintiff as follows:

J. M. Johnson.

Direct examination.

By Mr. DENIS:

Witness was the chief clerk of the railway mail service, 8th division, and was such during the months of June and July, 1894. His duties were to have charge of the passage and receipt of mails at the different post offices in southern California over the different lines of railway. A pamphlet being shown by Mr. Denis, entitled "No. 140, railway service, 8th division, schedule of mail train- for June, 1894," the witness said: "This is a schedule of the mail train- in the 8th division, issued once a month by the superintendent of the railway mail service at San Francisco, Samuel Flint, superintendent of the 8th division." Said schedule was received by the witness in the ordinary course of business and was acted upon in the dispatch of mails and receipt of mails.

(The pamphlet referred to was then offered in evidence by Mr. Denis and filed as Government Exhibit No. 2.)

Cross-examination.

By Mr. WILLIAMS:

100 This particular schedule was received by the witness along with a number of them addressed to the chief clerk of the railway mail service. He don't know that he received that particular schedule, but received one like it. That particular one was handed witness here in court. He had no recollection of ever having seen that particular schedule before. He was well satisfied it is correct, because they are all issued for the month. He made no mark upon it for identification and had no- compared it with any other schedule.

The witness testified further as follows: The Southern Pacific and the Southern California railways within the southern judicial district carry the mails of the United States. The schedule of mail train- on the Southern Pacific within this judicial district is found on page 34 of the document Exhibit No. 2. It shows a train, designated as train No. 18, scheduled to leave the city of Los Angeles, Arcade depot, at 2 p. m. daily.

Redirect examination.

By Mr. DENIS:

The mails of the United States did not leave Los Angeles on June 28th, 1894, for San Francisco. The San Francisco and Los Angeles

R. P. O. trains Nos. 18 and 20 should have left this city on June 28th for San Francisco. No. 18, with the United States mails, was scheduled to leave Los Angeles for San Francisco at 2 p. m. on June 28th. No. 20 was scheduled to leave at 7.30 p. m. These
101 mails did not leave the city of Los Angeles on June 28th. They were ready to go.

Recross-examination.

By Mr. WILLIAMS:

The San Francisco mails were ready to go. The witness did not examine the packages to see that they were directed to San Francisco. It was his impression that it was the San Francisco mails. He only knew it as it was customary for the mails to leave on that day.

James W. Erwin.

Direct examination.

By Mr. DENIS:

Witness was a United States post-office inspector in the month of June, 1894. He arrived in the city of Los Angeles on the morning of June 27th and started back to San Francisco the same day. He went to the Arcade depot to take the train which was scheduled to leave at 2 p. m. on that day. The Arcade depot is in the city of Los Angeles and belongs to the Southern Pacific Company. He took the train that day, the 27th, at the Arcade depot.

(Mr. Williams objected as incompetent, irrelevant, and immaterial, as not direct to the issue here, the indictment charging the overt act on June 28th, 1894. Objection overruled. Exception.)

The witness proceeded to testify as follows: He went into
102 the mail car. The train left the depot a little late and proceeded to River station and there it stopped. There a crowd of people collected around the locomotive of the train No. 18. The United States mail was in the car at the time. Two men whom witness did not know at that time addressed themselves to the fireman. They asked the fireman not to go out on the locomotive, and he resisted their appeals for some little time. They not only pleaded with him, begged him not to go, but threatened him also if he did go. Most of the talking was done by a man named Gallagher. Gallagher said to the fireman, "If you go out today you will make a big mistake and you will regret it." Gallagher also called this fireman a scab; said he would be a scab if he went out with it. About that time witness introduced himself as the post-office inspector and called the attention of Gallagher and Johnson to the fact that there was in the postal car a quantity of United States mail which should go on that train. Witness said, "Boys, if this train don't go out you will be responsible for it, in my opinion." Witness and these parties had considerable talk at the time and they desisted from talking with the fireman and moved off a little

ways. The man who had done most of the talking beckoned several times to the fireman. The fireman finally threw down his gloves and the train did not go out that day. Most of the talking, in fact witness thinks all of the talking, which he heard was done by these two men, and most of it by the man Gallagher. Gallagher said to the fireman, "You know you will be termed a scab if you go out with this train." Profane language was used. The
103 argument of Gallagher with the fireman was accompanied with considerable strong language. Witness testified that it was quite difficult for him to give the exact words that were used. He remembered that the fireman was called a son of a bitch, and when he finally at one time said that he would go out and jumped into the cab he called him a son of a bitch and a scab. When the train stopped there were perhaps 50 and very soon, witness said, at least 200 people were close about the locomotive. The locomotive was on the track opposite the depot at River station, about 30 or 40 feet from the depot building. The mail on that train did not go that day because the train did not go. The train did not go because of the strike, witness should say. Witness stayed in that train until about half past five o'clock in the afternoon of June 27th.

The next day or the 29th, witness is not certain which, witness was in the office of Mr. Denis, the United States attorney. Mr. Flint, the post-office inspector, was present. The defendants Johnson and Ross came in and asked for Mr. Denis and asked witness to show them the law bearing on the stop-age of the mail trains. They asked the question whether or not a mail car did not constitute a mail train. Mr. Flint replied that a mail train was any train designated by the Post Office Department or any of the subordinates of the Postmaster General as such and might be composed of any character of cars. Mr. Johnson wanted to know if a postal car and a locomotive was not a mail train. Witness said, "Yes; if
104 such train is a regular train sent out by the railway company." "Well," said he, "we are perfectly willing that the mail should be carried, and why can't they cut off the other cars? We will let the mail go." Witness called the attention of these gentlemen to an opinion of the United States court in the case of The United States *vs.* Clark, 13 Philadelphia, page 476, and read the following paragraph from page 293 of the Postal Laws and Regulations of 1887:

"It is a criminal offense to obstruct mail train, although those guilty are willing to permit the passage of the mail car alone."

Train No. 18 did not go to San Francisco that day. It remained in Los Angeles 16 or 17 days. Some of the mail was sent by steamer to San Francisco about the 5th of July, 1894, the first mail that went north. The mail that was in the car at the time the witness started remained in Los Angeles some time. Witness took part of it to San Francisco on the 3rd of July. From the 27th of June until the 3rd of July no United States mail left the city. During that time no trains were operated between Los Angeles and San Francisco.

Cross-examination.

By Mr. WILLIAMS:

All that witness has testified to occurred on June 27th except his meeting Johnson and Ross, which was on the following day or possible the 29th; witness was not certain which. He did not
105 see Johnson or Ross at the train on the *train on the* 27th at River station. Mr. Gallagher and another man appeared to be the spokesmen. Witness did not recognize any of the defendants there. He never saw any of these defendants at any of the depots, the Arcade or River station, on the 27th or 28th of June or at any time. The Postmaster General had by an order designated at that time what const-uted a mail train. This order makes any regular train a mail train. Johnson and Ross were apparently seeking advice in their meeting with witness at the office of Mr. Denis. They made no threats. They were very gentlemanly, indeed; very courteous in their demeanor; seemed to want to know what to do in the matter and showed no disposition to violate the law; none at all.

Redirect examination.

By Mr. DENIS:

Witness stated to them that they would be violating the law if they obstructed the passage of the mail.

R. R. Haines.

Direct examination.

By Mr. DENIS:

Mr. Haines is the local manager of the Postal Telegraph Company and was such during the months of June and July, 1894. Certain messages filed as Government Exhibits Nos. 3, 4, 5, and 6 were received at his office and dispatched from there to their respective destination in the due and ordinary course of business.

"By Mr. DENIS:

106 "Q. Examine this paper, if you please, and tell me whether this is an original or a copy (handing document to the witness).

"Answer. This is apparently not an original. It is something I know nothing of.

"Question. Did I ask you whether in the ordinary course of business these messages were transmitted from that office?

"Answer. They were.

"Mr. DENIS: The Government offers in evidence four certain papers as testified to by the witness, being dispatches received at the office of the Postal Telegraph and Cable Company in the due course of business and transmitted from that office.

"Mr. WILLIAMS: We object upon the ground that no sufficient grounds have been laid to establish any conspiracy, and that these documents, if they amount to anything, are the declarations of one of the conspirators, and as against the other it is not admissible, no conspiracy having been shown; irrelevant, immaterial, and incompetent.

"The COURT: Objection overruled.

"Mr. HOLTON: And the further objection, on the ground that at least one of these was dated the 4th of July, long after this occurence."

(Thereupon counsel for the Government read the documents referred to to the jury, and they were thereupon marked, respectively, Government Exhibits Nos. 3, 4, 5, and 6, and are in words and figures as follows, to wit:)

107 EXHIBIT No. 3.

"L. A., 6, 28, 1894.

"To H. A. Knox, c. o. S. P. depot, Sacramento, Cal.:

"General tie-up ordered—advise all employees.

"W. H. CLUNE, *Sec'y.*

"PHILLIP STANWOOD, *Pres.*"

EXHIBIT No. 4.

"L. A., 6, 28, 1894.

"To E. V. Debs, 421 Ashland block, Chicago, Ills.:

"Southern Pacific arranged to run three trains, Pullman's, to-night—board mediation ordered general tie-up—give us your sanction quick. Sure to win.

"W. H. CLUNE, *Sec'y.*"

EXHIBIT No. 5.

"L. A., CAL., 6, 30, 1894.

"To E. V. Debs, Ashland block, Chicago, Ills.:

"Situation unchanged—the S. P. all out. Answer mine of the twenty-eighth.

"W. H. CLUNE, *Sec'y.*"

108 EXHIBIT No. 6.

"L. A., 7, 4, 1894.

"To H. A. Knox, Sacramento, Cal., c. o. S. P. depot:

"Stand firm—all O K here. Sure to win.

"W. H. CLUNE, *Sec'y.*"

Cross-examination.

By Mr. WILLIAMS:

One of the dispatches, that of June 30th, were received by the witness personally. The others were received by his clerk.

Redirect examination.

By Mr. DENIS:

Witness has no independent recollection of who delivered to him that dispatch for transmission.

Edgar A. Beardsley.

Direct examination.

By Mr. DENIS:

Witness in June and July, 1894, was the local manager of the Western Union Telegraph Company's office in the city of Los Angeles. He identified certain telegrams received in the ordinary course of business through the Western Union office, delivered in their usual course of business at the main office of the company, corner of Court and Main Sts., and also telegrams filed at River Station branch office, transmitted through the main office through the due course of business. Witness recognizes defendants Clune and Johnson; saw them at the office in Los Angeles city and frequently since writing telegrams, and offered the same for transmission.

109

Cross-examination.

By Mr. WILLIAMS:

Witness knows these telegrams were delivered to the witness, but don't know that he received them in person.

J. H. Ramboz.

Direct examination.

By Mr. DENIS:

Witness testified that he was the night receiving and delivery clerk for the Western Union telegraph office in the city of Los Angeles, and was such in the months of June and July, 1894. He saw defendants Clune and Johnson in the Western Union telegraph office during the strike. They offered telegrams for transmission. Witness identifies telegrams shown him as having been received for transmission, but has no recollection of having received these particular ones from Clune or Johnson. He filed a great number of them.

(The telegrams were offered in evidence by the attorney for the plaintiff. Objection by defendants. Objection overruled. Exception.)

Documents were filed as Government Exhibits Nos. 7 to 21, inclusive. Said exhibits are in the words and figures as follows:

110 EXHIBIT No. 7.

"Los A., *June 28th*, 1894.

"To George Dillinger, Dunsmuir, Cal.:

"General tie-up ordered—advise all employees. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

"PHILIP STANWOOD, *Pres.*"

Exhibits 8 to 18, inclusive, are the same message as No. 7, to wit, "General tie-up ordered—advise all employees. Sure to win," dated at Los Angeles, June 28th, 1894, and signed W. H. Clune, sec't'y; Philip Stanwood, pres., and addressed respectively to the following persons:

Exhibit No. 8, to R. G. Evans, Benicia, Cal.
Exhibit No. 9, to J. M. Wagner, 3153 Pacific Ave., Ogden, Utah.
Exhibit No. 10, to Jas. Kennedy, Terrace, Utah.
Exhibit No. 11, to H. A. Raburn, Bakersfield station, Kern Co., Cal.
Exhibit No. 12, to James Nounally, Mojave, Cal.
Exhibit No. 13, to P. McInerny, Rocklin, Cal.
Exhibit No. 14, to G. W. Lindsey, Wadsworth, Nev.
Exhibit No. 15, to G. B. McClintock, Truckee, Cal.
Exhibit No. 16, to C. M. Rose, Winnemucca, Nev.
Exhibit No. 17, to Frank E. Porter, Reno, Nev.
Exhibit No. 18, to Chas. B. Kappler, Carlin, Nev.

EXHIBIT No. 19.

"LOS ANGELES, CAL., —— 29, 1894.

111 "To Barrett, Bakersfield:

"Have stopped trains at Mojave, comes to Los Angeles with engine and caboose.

"PHILIP STANWOOD."

EXHIBIT No. 20.

"L. A., 7, 10, 1894.

"To L. B. Hays:

"No. nineteen and one freight train left here this morning—everybody on the train are 'scabs.' Hold them there. Sure to win.

"W. H. CLUNE, *Sec'y.*"

EXHIBIT No. 21.

"JUNE 26, 1894.

"CHICAGO, ILLS., —— 26.

"W. H. Clune, 1844 Naud St., Los Angeles, Calif.:

"Boycot against Pullman cars in effect at noon today by order of convention.

"R. V. DEBS."

Witness identified another batch of telegrams which were filed as Government Exhibits Nos. 22, 23, 24, and 25. Objected to. Objection overruled. Exception. Said exhibits are in the words and figures as follows, to wit:

112 EXHIBIT No. 22.

"LOS ANG., 7, 4, 1894.

"To L. B. Hays, Tucson, Ariz.:

"We are out irrespective of organizations—stand firm—none go back until all are reinstated—we have sympathy entire population—tried to advise you since start—keep us posted—sure to win.

"PHILIP STANWOOD, *Pres't.*
"[*W. H. CLUNE, *Sec'ty.*]"

EXHIBIT No. 23.

"LOS ANG., 7, 4, 1894.

"To P. E. Stillwagon, Indio, Cal.:

"All solid here—and all points on system. Sunset out—sure to win.

"W. H. CLUNE, *Sec'ty.*"

EXHIBIT No. 24.

"L. A., 7, 4, 1894.

"To Geo. Kuhns, El Paso, Tx.:

"Stay with the pot. Out here to a man. Los Angeles sends greeting to the Gate City. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

113 EXHIBIT No. 25.

"L. A., 7, 20.

"To P. E. Stilwagon, Indio, Cal.:

"Good boy, outside of a few engineers we are solid in every department, nothing moving at Sacramento, Oakland, Bakersfield or Benicia. Sure to win.

"W. H. CLUNE, *Sec'ty.*"

Cross-examination.

By Mr. WILLIAMS:

Those dispatches were received at the Western Union office. Witness don't know by whom they were delivered.

Redirect examination:

By Mr. DENIS:

Mr. Clune paid for the transmission of these dispatches.

[*Words enclosed in brackets erased in copy.]

Recross-examination.

By Mr. HOLTON:

Witness was not a telegraph operator; did not send any of those dispatches; don't know of his own personal knowledge that any of them were sent.

114 *Harry Phillips.*

Direct examination.

By Mr. DENIS:

Witness was receiving clerk for the Western Union Telegraph Company at Los Angeles in the months of June and July, 1894.

(Counsel exhibits a batch of telegrams.)

Witness received all of these telegrams at the main office at Los Angeles city.

(Plaintiff offers these dispatches in evidence. Objection. Objection overruled. Exception.)

Whereupon counsel for the Government reads to the jury and files as Government Exhibits Nos. 26, 27, and 28; which said exhibits are in the words and figures as follows, to wit:

EXHIBIT No. 26.

"LOS ANGELES, CAL., 6, 27, 1894.

"To G. T. Bishop, sec't'y, A. R. U. 310, Oakland, Cal.:

"Stand firm, will boycot- at Los Angeles this p. m.

Clune

"W. H. (CLUNE), *Sect. n o [p o]**

"[T. C. GALLAGHER,]* *Eighty.*"

EXHIBIT No. 27.

"L. A., 7, 10, 1894.

"To P. E. Stillwagon, Indio, Cal.:

115 "'Scabs' sneaked out of here this morning under protection of troops, one B. T. L. F. man out of entire membership 'scabbed'—hold them at Indio if they reach there—freight train went out this a. m. under guise as relief train for desert, if not as represented hold them and wire us—all are solid at every point, all good men at their posts—will win on lines laid down—determined sure to win—all protected under our banner.

"W. H. CLUNE, *Sec'ty.*"

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 28.

"L. A., 7, 10, 1894.

"To L. B. Hayes, Tucson, Ariz.:

"Freight and passenger train left here this morning under guard of troops in the guise as relief trains for desert manned by 'scabs'—pay no attention to press reports—all points west of here solid to a man—sure to win.

"W. H. CLUNE."

Cross-examination.

By Mr. WILLIAMS:

Most of these dispatches were received from Mr. Clune.

Redirect examination.

By Mr. DENIS:

116 The general subject of the dispatches handed to witness by Mr. Clune for transmission were concerning the strike.

W. J. McIntyre.

Direct examination.

By Mr. DENIS:

Witness was ticket clerk and operator at River station for the Western Union Telegraph Company.

(Two documents were exhibited to witness.)

Witness received these documents from Mr. Clune and Mr. Stanwood and sent them over the wire.

(Telegrams offered in evidence. Objection. Objection overruled. Exception.)

Telegrams filed as Government Exhibits Nos. 29 and 30, which are in words and figures as follows, to wit:

EXHIBIT No. 29.

"LOS ANGELES, CAL., 6, 29, 1894.

"To H. E. Hochenderfer, Albuquerque, N. M.:

"No Pullman [cars being]* attached in any way entire system.

"PHILLIP STANWOOD, *Pres.*

"W. H. CLUNE, *Sec'y.*"

[* Words enclosed in brackets erased in copy.]

EXHIBIT No. 30.

"LOS ANGELES, CAL., —— 28.

117 "*Los Angeles, Cal., 28.*

"To M. Taub, c. o. J. J., Houston, Tex.:

"No Pullmans attached in any way entire system.

"PHILIP STANWOOD, *Pres.*

"W. H. CLUNE, *Sec'y.*"

Cross-examination.

By Mr. HOLTON:

Mr. Clune delivered the messages to witness. Mr. Stanwood was with him when he sent the messages.

F. V. Gordon.

Direct examination.

By Mr. DENIS:

Witness was night operator at River station from June 16th to July 23rd, 1894. His duties included the receipt for transmission of messages for the Western Union Telegraph Company.

(Mr. Denis shows witness batch of dispatches.)

Most of these dispatches were received from Mr. Clune and Mr. Stanwood. Mr. Clune paid for them.

(These dispatches were offered in evidence. Objection. Objection overruled. Filed as Government Exhibits Nos. 31 to 42, inclusive.)

118 *J. A. Muir.*

Direct examination.

By Mr. DENIS:

Witness was division superintendent of the Southern Pacific Company, Los Angeles division, in June and July, 1894. He knows all the defendants except Ross.

(Time-table No. 12 of the Los Angeles division was shown to the witness.)

Witness testified as follows: This time-table took effect on June 24th, at 1 a. m., on the Southern Pacific railroad. It shows the hours of arrival and departure of the regular trains of that company to Los Angeles. It shows a train known and designated as train No. 18 and one known and designated as train No. 20. It shows that train No. 18 was to leave the Arcade depot at 2 p. m. daily.

(Document offered in evidence and filed as Government Exhibit No. 43.)

Train No. 18 was regularly composed of mail, baggage, and express. Whether the mail car at that time was a combination mail and baggage or straight mail car, straight baggage, and straight express, I do not recollect; also smoking car, coach, two coaches, the Santa Barbara coach as well, and one or more sleeping cars, tourists' and first-class Pullman cars. Train No. 18 was regularly made up on June 27th of this year. It left Arcade depot about 15 minutes late. Train No. 18 was made up at the Arcade depot after a great deal of trouble with some men that interfered with the mak-
119 ing up of the train, and it was taken as far as River station by the crew and there the men were persuaded to leave the train by some men. That train carried the mail in the usual way. It was stopped at River station on the 27th. It did not leave the Arcade depot on June 28th. The first date upon which the United States mails were carried by the Southern Pacific Company from the Arcade depot to San Francisco was about July 12th. On the morning of June 27th or 28th witness sent for Mr. Stanwood, understanding that he was president of the American Railway Union, an organization composed of the employees of the railway companies in active service and those who had already been railroad men and had entered other lines of business. Mr. Stanwood came to witness's office. They talked about the situation. Mr. Stanwood said that the tie-up had been ordered without his knowledge and that he was not at the meeting the night before, but that they had had a meeting and had order- this tie-up. Witness asked Mr. Stanwood if he could not straighten it out for him. He said he would try. He left the office and returned with a letter.

(Letter exhibited, identified by witness, read to jury, and filed as Government Exhibit No. 44, which is in words and figures as follows, to wit:)

EXHIBIT No. 44.

"LOS ANGELES, *June 27th*, 1894.

"J. A. Muir, sup't L. A. div.

"SIR: At a meeting held this evening it was unanimously
120 decided — railroad employee- to ratify and sustain boycott on Pullman cars, ordered by American Railway Union, and not to switch, haul, repair, or clean, or in any manner to assist in the equipment or operation of same until otherwise ordered.

"(Signed) PHILIP STANWOOD, *Pres*,
"W. H. CLUNE,
"*Local Sec'y* 80, A. R. U."

Witness made every effort to get trains out of the station. He knew that he could get no help from Mr. Stanwood or Mr. Clune and never had any more conversation with them. (Paper exhibited to witness by counsel.) The date on which witness first saw that paper he cannot recollect. It was on the bulletin-board at River station for a day or so and witness read it. Witness allowed it to remain there for quite a little time and then removed it, took it to

his office, and gave it to the grand jury. The paper exhibited is the same paper that witness took from the fulletin-board and took it to the grand jury.

(Paper was offered in evidence. Objection. Objection overruled.)
The document referred to was then read in evidence and filed as Government's Exhibit No. 45, and is in words and figures as follows, to wit:

EXHIBIT No. 45.

"As you are aware, our brother and co-employees in the town of Pullman, Illinois, are now striking against one of the greatest foes of labor in this country. Every effort to arbitrate has been spurned. Every plan for consiliation has been rejected. They have
121 been forced to the wall and compelled to strike. The American Railway Union has declared a boycott on all Pullman cars in view of the fact that the Southern Pacific Company have made arrangements to run three trains of Pullman cars out of Los Angeles tonight. We deem it prudent to declare a general tie-up. The Santa Fé employees, in protection of their rights, have gone out without any exception. We beg you to give us 'your united support.' We must win this fight or labor goes to the wall for all time.

"W. H. CLUNE, *Sec'y.*

"Approved:
"A. S. JOHNSON,
"ISAAC ROSS,
"PHILIP STANWOOD,
"*Board Mediation, A. R. U., Local Union No. 80.*

Witness don't know whether it was posted up by Mr. Clune or one of the defendants or not; knew nothing about it except seeing it upon a board posted up.

Train No. 18 was regularly made up, including the United States mail, on June 27th. It proceeded from the Arcade depot to River station. There it was stopped. It was late in starting from the Arcade depot; it was delayed by two representatives of the American Railway Union, who stated that they were authorized to prevent the train from moving. About 1 o'clock p. m. on June 27th train No. 18 was brought from River station by the yard engine to the Arcade depot. After its arrival at the Arcade depot a yard crew handled it, consisting of a fireman and two yardmen, two switchmen. After the train arrived at the Arcade depot two men, representing themselves as members of the American Railway Union, interfered with the yard crew and asked them to set the Pullman cars off of the train onto the side track, which they started
122 to do, when witness was notified by one of the men in the office that there was trouble in the yard, and he left his office and went into the yard. There he found the work at a stand-still, and the fireman of the engine and the two switchmen had set the Pullman cars over onto a side track from the train, detached them from the rear end of No. 18, and set them over on a side track.

Witness asked them why they had done so, and they replied that they had been instructed to do so. Witness asked them who had instructed them. Their answer was, "Some of the gang." Witness asked them what authority any person had to interefere with the working of the yard. Just at that time these two parties stepped up. One of them was formerly a switchman in the night yard. The other one was an extra switchman at that time. They claimed that they had the authority to—that they had authorized the men to do this work. Witness asked them who had authorized them, and they said that they were authorized by the A. R. U. to do so. After witness had talked with the men for some time he ordered Gallagher—these two men, rather—Gallagher and Buchanan were the names—he ordered them off of the grounds and finally prevailed upon the yardmen to switch the Pullman cars back onto the track again. They did so, leaving an opening of about a car-length between the Pullman cars and the coaches. In the meantime Gallagher and Buchanan had gone to the ticket window and bought tickets to some point a short distance north of here—Glendale or Burbank—and when witness again spoke to them with regard to leaving the premises they announced that they had tickets,
123 they were passengers, and on the ground ready to proceed with the train. After the cars were placed back on the track to the rear of train No. 18 the fireman of the yard engine was then asked by the men why he had placed the cars there, but witness did not hear his answer. He seemed to be very angry with Buchanan and Gallagher, and witness did not hear his answer. After that Buchanan and Gallagher circulated considerably around among the employees of the company who were going to take that train out—train No. 18—and prevailed upon the fireman—well, talked to him, so that he was very much undecided. Witness saw them talking to him and went to him and told him his place was on his engine, and that he had better go there and remain until —, or witness would have a man in his place, or words to that effect. They then talked to the brakeman. Witness don't know whether they talked to the conductor or not. They talked to every person they could to prevent them taking this train up. They talked to the men so much that they would not couple the train together. They would not back the coaches up to the Pullman cars to attach them. Witness went to the engineer and told him that if he would watch out witness would give him a signal and would couple the train himself, which he did, and after it was made up Mr. Odell, the conductor, gave the signal, and the train started for River station. That was where it was tied up. That train did not go out for a great number of days.

Witness had a conversation with defendant Johnson one night;
thinks that he was spokesman of a large crowd of men that
124 came to Mr. Burkhalter and himself and announced that they had decided to resign. It was some time after the 27th; possibly the 5th or 6th of July. Witness is not positive; possibly the 3rd or 4th. They came to witness and stated that they had

held a meeting, and that they had decided to resign from the company's service.

The depot grounds where these two men were was the property of the Southern Pacific Company. The track in San Fernando street, at River station, where the train ordinarily stops, is on the right of way of the Southern Pacific Company. Train No. 18 was on that track when it was stopped.

Mr. Stanwood told witness he was a member of the railway union, and also told witness that Mr. Gallagher was. Witness don't recollect whether he said Buchanan was or not.

Cross-examination.

By Mr. WILLIAMS:

Witness thinks he stated as much as he can about defendants' participation in this matter. There may be other things come up to his mind. He don't recollect of anything just now. He is not sure that Mr. Johnson came on the 5th or 6th, when they were going to resign; thinks he did, but is not positive about it. Mr. Putman was the spokesman on that occasion.

Redirect examination.

By Mr. DENIS:

The witness has not stated all that he has been able to find
125 out by hearsay. What he has testified to has been of his own knowledge.

D. BURKHALTER, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness is division superintendent of the Southern Pacific Company, Mojave division. He was in Los Angeles city from the 27th of June to the 14th of July, 1894. The Southern Pacific operates a railroad in this judicial district, and was operating such railroad during the months of June and July. They did not operate their railroad trains, their regular pas-enger trains, on the 28th and 29th and up to the 10th of July, as they had been in the habit of doing theretofore. The reason why they did not was on account of the strike. That strike was inaug-rated by an organization known as the American Railway Union. Witness knew defendants Ross, Johnson, and Clune. He met Mr. Stanwood on the 27th of June the first time; was present at a conversation, on the morning of the 28th of June, between Mr. Stanwood and Mr. Muir. Mr. Muir sent for Mr. Stanwood. Witness suggested to Mr. Muir that they made request of Stanwood to allow train No. 20, which had arrived the evening before, to proceed to San Francisco. That was the train coming from El Paso. Mr. Stanwood came down, and witness and

Mr. Muir represented to him that, inasmuch as train No. 20 had started from its originating point before the strike was called, that passengers and mail had started before the strike was called,
126 that they should not detain it; that all other trains that had started under the same circumstances from their originating point before the strike was called had been allowed to go through on the line of the Central, and that Southern Pacific No. 19, that had arrived at Los Angeles, had gone on through. They tried to impress Stanwood with the idea that it was wrong to delay the train under those circumstances, as it was working a hardship on people who had started from their homes and knew nothing of the strike, and also was holding mail that had started with the train before the strike was called. They had quite a long talk with Stanwood, and he said he would go up and call a meeting and let them know at 10 o'clock if they would meet him at the river station.

Witness and Mr. Muir went at 10 o'clock, and he was sitting in the office-room—the yardmaster's office—witness thinks, and Mr. Johnson came up and spoke to witness and asked witness if he was waiting for a reply to the request he and Mr. Muir had made, and witness told Mr. Johnson that they were, and Johnson said he would get witness and Mr. Muir an official answer in a short time; probably 20 minutes. Johnson went over across the way, in the direction of the hall where they usually held these meetings. He returned in a short time and handed witness a letter addressed to Mr. Muir or witness. Witness don't have the letter; he handed it to Mr. Muir.

(Here the witness was withdrawn.)

127 J. A. MUIR, recalled on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness heard the testimony of Mr. Burkhalter; remembers going to River station with him; remembers receiving such a letter. That letter was given by witness to the grand jury when witness was called before them.

(Mr. Denis thought the letter had been delivered to him and was lost. Mr. Holton said, "If it is given to Mr. Denis we will admit it is lost." Mr. Denis said, "It is lost, your honor. If I find it, I will deliver it to you before the case is ended.")

D. BURKHALTER, recalled on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

The substance of the letter was to the effect, "Inasmuch as the passengers on train number 20 had expressed a willingness" (wit-

ness forgets) or "petition to Mr. Muir that the train be allowed to go forward without the sleepers, we cannot allow number 20 to move."

Witness was not positive how the letter was signed. He noticed the signatures of two or three of the defendants. Mr. Johnson handed witness the letter and witness handed it to Mr. Muir.

128 The Southern Pacific operates a railroad from El Paso, Texas, to San Francisco, California, and one from Portland, Oregon, to San Francisco, California, and one from Portland, Oregon, to New Orleans, Louisiana, by way of Los Angeles, carrying mails of the United States. The said company did so operate such trains between such points in June and July, 1894.

Cross-examination.

By Mr. HOLTON:

The letter testified to by the witness was received from Johnson on the 28th or 29th. He is positive it was not on the 27th.

Redirect examination.

By Mr. DENIS:

Witness is sure the letter marked Government Exhibit No. 44 was not the letter witness referred to. He did not see the letter marked Government Exhibit No. 44 at that time.

Frank E. Prior.

Direct examination.

By Mr. DENIS:

129 In the months of June and July, 1894, witness was train-master of the Southern Pacific in the city of Los Angeles. He knows Mr. Stanwood; does not know the other defendants. He saw Mr. Stanwood in Mr. Muir's office on the 28th of June, and on that day heard a conversation which took place between Mr. Muir and Mr. Stanwood. At Mr. Muir's request had hunted up Mr. Stanwood and brought him to Mr. Muir's office, where Mr. Muir and Mr. Burkhalter were waiting. Mr. Muir immediately took up the matter of the strike with Stanwood, and Stanwood said that he did not order the strike. He didn't know who did, and then he stated that it was the right thing that the strike should be in progress and went on to talk about the rights of the public. Witness remembers one remark Stanwood made particularly; it was this, "Damn the public; we are fighting for our rights." Stanwood said, "Our salaries have been cut; yours will be cut if this thing keeps on." After Stanwood got through Mr. Muir called his attention particularly to the fact that train No. 20, coming from New Orleans, destined to San Francisco, which had come in the night previous, had been tied up at Los Angeles, whereas on other parts of the system and other roads trains that started from their origi-

nating point before the strike was ordered were allowed to go through to their destination, and spoke to him particularly about passengers that were waiting downstairs at an expense and asked him if that particular train and 19, which started *for* San Francisco for New Orleans the day before, could not be allowed to go through to their destination. Mr. Stanwood said that if he could be sure that he was right in the matter he would give his permission, but that he could not say without conferring with his colleagues,
130 the mediation committee, witness thinks he said. As that was all that could be gotten out of him, he went to confer and said he would answer later. Later in the same *say* witness thinks he saw the answer on Mr. Muir's desk. Something was said in the conversation about the American Railway Union, and Mr. Stanwood justified the calling of the strike. Mr. Muir sent for Mr. Stanwood because Stanwood was president of the A. R. U. organization.

The first train that left the Arcade depot carrying mail was the Santa Barbara local, which left on the afternoon of July 5th. That was the first passenger train. The first regular train left for San Francisco not before the 10th of July. About the 11th or 12th there was a special started.

Cross-examination.

By Mr. WILLIAMS:

Mr. Burkhalter, Mr. Stanwood, and Mr. Muir were present during this conversation which the witness heard. Witness was pretty near deaf in both ears. Witness could not hear Mr. Muir and Mr. Burkhalter testify. At the meeting he listened to that conversation leaning on the desk beside them. He had just brought Stanwood in and was, of course, interested in knowing what he would say.

(Mr. Denis exhibited to counsel for the defendants the letter that Mr. Burkhalter testified to, stating that his stenographer had found it after the court adjourned.

131 J. A. MUIR, recalled on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

(Mr. Denis shows witness as paper.) Witness first saw it at River station on the 28th of June last. It was handed to witness by Mr. Burkhalter. He took possession of the letter and kept it and presented it to the grand jury at their request. The circumstances leading up to the receipt of that letter were as follows: The trains were coming from points east of Los Angeles—passenger trains and freights—and were being tied up here by the strike. Mr. Muir sent for the president, Mr. Stanwood, to ask him to see his people and allow trains to pass on to their destination, and Stanwood stated that he would do so. He would see his people and let Mr. Muir know at 10 o'clock. Mr. Burkhalter and witness went to River

station for the purpose of getting the answer, and this letter was handed to witness by Mr. Burkhalter.

"Mr. DENIS: We offer in evidence that letter as the same letter that was testified to by Mr. Burkhalter, and which I thought, your honor, was lost.

"The COURT: The same objection, I understand?

"Mr. WILLIAMS: Yes, sir.

"The COURT: Same ruling."

(Whereupon the document referred to was read to the jury and filed in evidence as Government's Exhibit 46, and is in words and figures as follows, to wit:)

132 EXHIBIT No. 46.

"LOS ANGELES, CAL., 6, 28, 1894.

"D. B., Esq., sup't Mojave division; J. A. M., sup't L. A. division.

"GENTLEMEN: In regard to your request of this a. m. to our president, Mr. Stanwood, we beg to say that in view of the fact that the passengers now in the Arcade depot have, by petition to you, signified their willingness to go to their destination in day coaches, we cannot consistently grant your request.

"Respectfully yours, A. T. JOHNSON,
"*Sec'y Board Mediation.*

"Approved:
"——— ———, *Ch'man.*
"PHILLIP STANWOOD.
"ISAAC ROSS."

GEORGE H. ODELL, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness was conductor of the Southern Pacific railway in the months of June and July, 1894; a conductor of passenger
133 trains. On the 27th of June, 1894, he was conductor of train No. 18. Train No. 18 is a regular passenger train due to leave Los Angeles at 2 p. m. It was made up of mail, combination mail and baggage, express car, two coaches, smoker, tourists' car, and two sleepers, and was ready to leave Los Angeles on the 27th of June, 1894.

"By Mr. DENIS:

"Question. Describe fully what happened at the Arcade depot upon the leaving or immediately prior to the leaving of that train on the date named.

"Mr. WILLIAMS: Same objection, your honor.

"The COURT: Same ruling. Objection overruled.

"Mr. WILLIAMS: It appears to have been before the alleged offense was committed."

The witness proceeded to testify as follows: On the 27th, after a few minutes' delay, the train was made up and left the Arcade station and went as far as River station.

Witness went to the Arcade depot to take charge of train No. 18 on the 27th. It did not leave on time. The reason was there was a delay in the making up of the train. That delay consisted in the switching of the Pullman sleepers. The train was first brought to the station by the yardmen, and the sleepers were cut off and put over on the track, and after some argument with Mr. Muir and the yardmaster the sleepers were brought back and put as they usually stand, within about a car-length of the coaches, leaving the opening for the incoming train from San Francisco, due at 1.48. The argument which Mr. Muir and the yardmaster had, spoken of by witness, was had with Mr. Gallagher and Mr. Buchanan. Witness don't think that Mr. Gallagher had any business at that time, and
134 didn't know Mr. Gallagher before that. After said argument the yardmen brought the sleepers back and placed them at their usual place where they always stand, and after that, when the train was ready to leave, Mr. Muir gave the engineer the signal to couple up the train. The train was coupled up after some 10 or 15 minutes' delay, and left there and went to River station.

"By Mr. DENIS:

"Question. Before leaving there, did you hear any conversation between Gallagher and Buchanan and any member of the train crew?

"Mr. WILLIAMS: We object upon the ground it is irrelevant and immaterial and incompetent. There has no conspiracy been shown or that these parties were in any way connected with Gallagher and Buchanan, and the declaration of one conspirator not in the presence of another is not admissible.

"The COURT: Objection overruled.

"Mr. WILLIAMS: We except to the ruling.

"A. Gallagher was after the fireman. The fireman came back and spoke to me. He says, 'This man has made a demand; what will we do?' I told him I was going out and it was best to get back on his engine.

"Q. Did you hear Gallagher say anything to the fireman?

"Mr. WILLIAMS: Same objection.

"The COURT: Same ruling.

"Mr. WILLIAMS: Same exception."

Witness proceeded to testify as follows: Gallagher told the
135 fireman he would be "scab" if he went out. Witness did not hear any other epithets at the Arcade depot used by Gallagher. Then the train left the Arcade station in the usual and regular way, but a few minutes late, on its way to its destination to River station. At River station Mr. Gallagher got the fireman

down, and afterwards the fireman said he would go out and he got back on his engine, and they called him a scab, a son of a bitch and a scab, and all kinds of names. There were around the engine at that time all the way from 50 to 150 people. It was Gallagher who called the fireman scab and a son of a bitch of a scab. That train did not leave River station for its destination that day.

"By Mr. DENIS:

"Q. What is understood to be a scab, Mr. Odell?

"Mr. WILLIAMS: I object to it as irrelevant, incompetent, and immaterial, and that it does not lie in the mouth of the witness to define the word 'scab.'

"The COURT: Objection overruled.

"Mr. WILLIAMS: It is a word of general meaning; people understand what it means. Except to the ruling."

The witness proceeded: He is a member of the Order of Railway Conductors, and has been such for 12 years. It is generally understood among railroad men that one who works, notwithstanding a strike having been declared, is a scab.

"By Mr. DENIS:

"Q. How is he treated by his fellows?

"Mr. WILLIAMS: Objected to as irrelevant, immaterial, and incompetent.

136 The COURT: I think it is competent to show that it is a term of opprobrium, if such it be. Objection overruled.

Witness proceeded: He is generally hooted at by a good many men, and it is very hard for him to get a situation anywhere by reason of his having been branded as a scab.

Cross-examination.

By Mr. WILLIAMS:

Witness never saw these defendants or either of them at the Arcade depot or at the other depot participating in this trouble of the 27th of June.

J. J. FINN, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness was general yard master of the Southern Pacific, and was such during the months of June and July, 1894. He knew the four defendants. Mr. Clune's occupation on the 27th of June was that of keeping a cigar store. Witness thinks Clune was not in the employ of the Southern Pacific Railroad Company on that date. He knew the defendant Johnson. He was on the 27th and 28th of June

a brakeman on the Mojave division of the Southern Pacific railroad. He knew the defendant Philip Stanwood. His occupation of the 27th of June and on the 28th was that of one of the yard crew on the section. He knew the defendant Isaac Ross.
137 On the dates named he was a conductor on the Mojave division.

Witness was at the Arcade depot on June 27th, and left there about five minutes before train No. 18 was due to leave, and went up on what is called the Whittier train to what is called River station. Witness heard a conversation between a person named Gallagher and one named Buchanan with Mr. Muir and the yardmen that took No. 18 down. He did not hear any conversation between the parties named and any member of the train crew of No. 18 at River station on the 27th of June. Train No. 18 did not leave River station on the 27th. Witness on the 27th had charge of all trains coming in and going out of Los Angeles to see that they were properly made up, including passenger trains and regular mail trains on that road. All regular passenger trains carrying the mail that leave Los Angeles are made up under the superintendence or direction of witness.

After the 27th of June witness had a conversation with Mr. Clune about joining the strike. Mr. Clune asked witness to go out. Mr. Clune and others sent for witness, as witness understands it or as he was told, and witness went up to see them at the corner of Sotello street and San Fernando street. By "others" witness mean- the other three defendants and several other persons who were present.

"By Mr. DENIS:

"Q. Were any of these defendants there?
"A. Yes, sir.
"Q. All four of them?
"A. I am pretty sure all four of them were there.
138 "Q. State what happened at that time.
"Mr. HOLTON: When was that?
"A. It was the night of July 3rd, between 10 and 11 o'clock.

"Mr. WILLIAMS: We object as irrelevant, incompetent, and immaterial because it appears that the act had been consummated.

"Mr. DENIS: Before ruling upon the objection I would like to ask one question.
"Q. Was the strike still on?
"A. Yes, sir.
"Q. Were the regular mail trains carrying the mails at that time or had that ceased?
"A. There wasn't no trains running, sir.
"Q. And the strike was still pending?
"A. Yes, sir.

"Mr. DENIS: We insist upon our question, your honor.
"The COURT: I think it is incompetent. Objection overruled. Answer the question.

"Mr. WILLIAMS: Exception.

"A. Well, they asked me to go out with them."

Witness proceeded to testify as follows: They said that they were going to ask every man that was in the employ of the company to go out. Witness asked Mr. Clune why they didn't call on the other heads of the departments to go out as much as the witness, and witness asked them if he did not go out what would be the
139 consequence, and he said, "You know what the consequences are." The witness said, "Well, I won't be called a scab and I will go out or resign." They didn't say what the consequences would be. Witness went and resigned. Witness said he went out because he didn't want to be called a scab. His experience had been that a man that is called a scab is branded as such and marked up everywhere all over the country, every place on cars and buildings and everything of that kind, and it has the effect that if a man goes to look for a position elsewhere that as a general rule they won't work with him on that account—that is, the employees of most any road won't work with him on that account. That is what has been the rule heretofore. Witness's experience was that a scab is subject to insult or offensive behavior from fellow railroad men. It was for that reason that witness resigned from the employ of the company.

Cross-examination.

By Mr. WILLIAMS:

Witness at that time belonged to the Order of Railway Conductors. Some of these organizations belonged to the A. R. U. organization. Witness did not quit the employ of the company for the purpose of crippling the traffic of that organization. He didn't consider it his duty towards laboring men or labor organizations to resign. He is in the employ of the S. P. Company. The yardmen held a meeting, witness among the rest of them, and voted to go back to work
in a body, which was done. Quite a number of men besides
140 witness in the yard-work resigned. Some of them belonged to the same labor organization that witness belonged to. They met as individuals, *not* as an organization, and decided to go back. Witness went back on the 14th of July. All of the men that went out did not go back. There was a few of them that voted to go to work and did not go to work. All were accepted that applied to go back. Witness was talking about the yardmen.

WILLIAM STEWART, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness is a locomotive engineer in the employ of the Southern Pacific Company; that was his occupation of June 27th, 1894. He was to take out train No. 18 on the 27th of June, 1894. It was a

regular passenger train carrying mail. He started with the train in the usual and customary way. Immediately prior to the departure of the train from the Arcade depot there didn't much happen. Witness backed the engine down to couple on the train; stayed there a few minutes and there didn't seem to be anybody to couple on. At last they coupled on—some one—and then while standing there waiting to couple on the Pullmans a couple of men came up and tried to persuade witness and his fireman not to couple on the Pullmans. The- said there had been a boycott declared that
141 day at noon, and it wouldn't be well for witness to couple on. They didn't want witness to pull those cars out at all. One of the men was Gallagher; the other was Buchanan. Gallagher seemed to be the spokesman. Witness asked Gallagher what authority he had to stop the Pullmans, and Gallagher said he was a switchman in the yard and showed witness his badge. Gallagher said he had messages, dispatches, that gave him authority to stop those cars being coupled on. Witness asked him why they brought those cars down there and put them in the usual place and made that train up. Gallagher said that they had not made the train up. Witness told him they had made that train up as usual and left that opening. Gallagher said that there was some misunderstanding; that they didn't intend to, but they got up there and they didn't want witness to couple onto them. Gallagher had two or three dispatches in his hand. He showed them to witness. He didn't read them. The dispatches were addressed to W. H. Clune. One of them was from a man by the name of Bishop or Rogers, in Oakland; he could not swear which; Bishop, he thinks. One of them, he thinks, was signed E. V. Debs.

"By Mr. DENIS:

"Q. (Showing Government Exhibit No. 21.) Will you look at that paper and sate whether that was the dispatch?

"A. I wouldn't swear that was the one, but it was similar to that—that is, the words.

"Q. The words are similar?

"A. Yes.

142 "Mr. DENIS: Witness identifies Exhibit 21 as being in words the same as the dispatch which Gallagher showed to him on June 27th.

"Mr. WILLIAMS: I don't understand him to say in exact words; do you?

"Q. Do you say that those are the words?

"Mr. DENIS: I didn't ask exact words, Mr. Williams.

"A. I couldn't say those were the exact words, but it said the same. Boycott was declared; boycott against Pullman cars in effect at noon. It was the same message.

"Q. The same message, and was addressed to the same person, W. H. Clune, and signed by the same name, Eugene V. Debs?

"A. Yes.

"Mr. WILLIAMS: I move to strike out the evidence unless they show the existence of the dispatch. They can't say there is a similar dispatch by producing this one.

"The COURT: The motion is denied.

"Mr. WILLIAMS: We except to the ruling."

Nothing else was done then. Witness told Gallagher and Buchanan that that didn't have any effect on him. Gallagher said he was a switchman. Witness don't remember whether he said he was a member of the A. R. U. or not. When Gallagher got through with witness he called the fireman down, and the fireman and he talked for quite a while. The train went from the Arcade depot to River station. It was destined to San Francisco. It did not go that day to San Francisco. The train stopped at River
143 station until 10 o'clock at night. That is the last that witness knew of it.

Cross-examination.

By Mr. WILLIAMS:

Witness didn't see any of the defendants about there at either of the depots at that time.

GEORGE E. LEWIS, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

He was a locomotive fireman on the Mojave division of the Southern Pacific Company, and was such on June 27th, 1894. He was booked to go out on No. 18 from Los Angeles to Bakersfield on that day. He was fireman of the engineer Stewart.

In relation to moving of train No. 18 on June 27 witness and Mr. Stewart arrived at the Arcade depot with their engine and witness went up to the office and registered, and when he came back there was two men standing there. Witness had never known them. They were talking to the engineer Stewart, and after they got through talking with him they called witness down, and the two men, Gallagher and Buchanan, showed witness two messages. If witness is not mistaken, they were from Bishop, and addressed to Clune. Witness would not swear what was in the messages
144 at the time; don't know as he read them. He said that he was a switchman in the yard. He asked witness what he was going to do about going out; said there was a boycott declared on Pullman cars in effect at noon that day. Witness told him that he didn't know what to do. He said, "What is my engineer going to do?" He says, "He is going out if he gets his signal," so witness said, "Well, see what the rest of the crew are going to do." Witness went back, about half way back, in the depot, and met the boys there and commenced talking to them, and Mr. Muir

tapped witness on the shoulder and asked him if he knew his place, and witness said that he did, and Mr. Muir said, "Get back on your engine," and witness went back there and stayed there. It was about 10 or 15 minutes late then. Mr. Muir gave the signal on the right-hand side of the train to back up and couple up to the coaches. That was done. During this time they were talking to witness and calling him everything they could call him. They told witness that Debs was the best friend the firemen ever had, and if he went out he knew the consequences; that he would be a scab, and he kept on that line of speaking for about 20 minutes. They didn't swear at witness as he heard until he rang the bell to leave the Arcade depot. Gallagher called witness a damned scab when he was leaving the Arcade depot.

The train went to River station. There they came up again. Gallagher came first; Buchanan was a few minutes later, and Gallagher came right up and he stayed probably 30 or 20 feet from the
145 engine, and he wanted witness to come down, and witness objected to getting off the engine at first, but Gallagher said he just wanted to speak to witness, and witness didn't know what it was, so he went down and spoke to Gallagher, and Gallagher started on the same conversation, and he got the thing worked up until witness thought the best thing he could do, being a member of the order, was to get off. The order referred to was the American Railway Union. Gallagher said he was a member of that order. Clune and Stanwood were members of that order. Witness stated that his reason for leaving the train that day was that he thought it was best for himself. Prior to that time if a man was called a scab it was almost impossible to get a job in the country, and if he did get it he couldn't hold it; the men would not work with him; his name would be chalked up all over every place, and he would just have to quit his profession; he couldn't stay with it. Chalking up means that they would write your name on every box car and at the end of it "scab." It would be hard to get work; it would be harder than if he had a clear record. If other employees learned that he was a scab it would be disagreeable working among them.

"By Mr. DENIS:

"Q. Would it have any effect upon his character to be called a scab?

"A. Yes; it would.

"Mr. WILLIAMS: I object as incompetent, irrelevant, and immaterial.

"The COURT: Objection overruled.

"Q. What effect would that have?

146 "A. Well, prior to that time your social standing wouldn't be worth anything.

"Mr. WILLIAMS: I move to strike out the social-standing portion of that answer.

"The COURT: The motion is denied.

"Mr. WILLIAMS: Exception to the ruling."

Cross-examination.

By Mr. WILLIAMS:

Witness did not see any of these defendants down there. Witness is in the employe of the company.

M. H. FLINT, called on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

Witness was United States post-office inspector; was in Los Angeles on the 27th and 28th of June, 1894, and until the 30th of July. He knew Mr. Clune by sight; had met Mr. Johnson and Mr. Ross. He first met Mr. Ross and Mr. Johnson in the office of the United States attorney on the 28th of June, in the city of Los Angeles. Witness was talking to Mr. Erwin and these gentlemen came in and wished to see Mr. Denis, who came out of his private office, and they had some conversation with him and he requested Mr. Erwin and witness to explain the law to these gentlemen respecting mail trains.

147 Most of the conversation was with Mr. Johnson; Mr. Ross was present. The conversation with Mr. Johnson was based entirely upon the opinion given by the acting attorney general during the great Northern strike, but witness only had the telegraphic portion of it. It said that the mails should be carried in their ordinary and usual form on railway trains, and Mr. Denis went to his book-case and pulled out the Postal Laws and Regulations and read them that portion of the decision given in a Philadelphia court. This conversation was on the 28th of June. Mr. Johnson's object was, as witness understood it, to run an engine and a mail car, and what witness told him was that they could not do it; that they were detaining the mails if they tried to cut off the engine and mail car from the train, and in support of that he read that portion of the Postal Laws and Regulations. The title of that case was "United States *vs.* Clark." Witness told them that that case decided that they could not run a train by simply cutting off the mail car and locomotive from the balance of the train. Witness thinks Mr. Johnson came to see the United States attorney about that identical point, whether they were obstructing the mail by simply running a locomotive and a mail car. Witness told them that they would be violating the law if they attempted anything of the kind and read this decision to them to establish it. The mails of the United States did not leave the city in the usual and regular way on the following day, the 29th, nor on the day after. There were a few locals with

148 mails about the 4th or 5th or 6th of July. It was about the middle of July before the San Francisco train with mails was got through. By locals witness means trains running to Santa Monica and San Pedro and such as that.

Cross-examination.

By Mr. WILLIAMS:

Mr. Williams offered the opinion of the United States attorney of date July 7th, 1894, published in the Herald of that date, signed George J. Denis, United States attorney; James H. Call, special United States attorney, addressed to James M. Johnson, Esq., chief clerk railway mail service, Los Angeles, California.

Objection was made to the introduction of this opinion, but was afterwards withdrawn by Mr. Denis, and the document was read to the jury, and was thereupon filed in evidence as Defendants' Exhibit No. 1, and is in words and figures as follows, to wit:

DEFENDANTS' EXHIBIT NO. 1.

"JULY 7, 1894.

"James M. Johnson, Esq., chief clerk railway mail service, Los Angeles, Cal.:

"I have the honor to request that you will immediately notify the proper officials of the Southern Pacific Company that they are required to transport the mails of the United States upon the local trains running out of San Francisco and Oakland, and that such trains are expected to be run in a reasonable manner and as
149 often as the ordinary business of commerce requires.

"Your attention is further called to section 3964, Revised Statutes, making all railroads post-roads of the United States.

"In this connection I beg leave to say that it may be impracticable for the company to operate trains carrying Pullman cars at the present time, but this does not excuse that company from carrying mails of the United States on all other trains.

"Very respectfully, GEORGE J. DENIS,
"*United States Att'y.*
"JOSEPH H. CALL,
"*Special U. S. Att'y.*"

The witness may have had a conversation with Mr. Denis with reference to what constituted a mail train prior to that meeting on the 28th. He thinks he did. In the conversation that witness had prior to the 28th Mr. Denis did not tell witness it was necessary for the railroad company to move the mails, whether they carried Pullman cars or not. A certain writing signed by a large number of men—railroad men—was returned by witness to Mr. Johnson. He thinks it was on the same day, the 28th; it may have been the next day. Witness saw the writing. It was signed by a hundred or two or three hundred names, men's names. It was a great, long petition. Witness does not remember to whom the petition was addressed, whether to the Postmaster General or not. Witness did not keep a copy of it; had it only a minute or two.
159 The paper was brought in by Mr. Johnson to Mr. Denis's office. The district attorney took possession of it, witness thinks.

Witness read the substance of it and Mr. Denis read it. When witness had the conversation with them the first time they did not have that petition. It must have taken some time to get it ready. The first conversation was on the 28th. Whether that document was brought on the 28th or on the 29th witness is not certain. He had a kind of memory it was two hours after the conversation, but it might have been the next day after. Mr. Johnson brought the petition in, accompanied by Mr. Ross, and there were two or three hundred names of the employees signed to it or what purported to be employees of the Southern Pacific Company. Witness was not prepared to say that if they would do all that they could to move the mails it would be satisfactory. Witness wanted the mails moved in the usual and ordinary way. He was not particularly interested in the Southern Pacific. The conversation was of a very few words at the time. Most of the conversation was prior to that time.

Redirect examination:

All the through trains from Los Angeles to San Francisco and from San Francisco to Los Angeles carrying Pullman sleepers were mail trains. That was the case during June and July, 1894.

151 Recross-examination.

By Mr. WILLIAMS:

Regular trains 17, 18, 19, and 20 carried Pullman cars from Los Angeles to San Francisco. There are two trains a day to San Francisco.

J. A MUIR, recalled on behalf of the Government, testified as follows:

Direct examination.

By Mr. DENIS:

During the months of June and July there were no regular passenger trains carrying the mail between Los Angeles and San Francisco which did not carry sleepers.

GEORGE J. DENIS, called on behalf of the Government, testified as follows:

My name is George J. Denis. I am the United States attorney for this district and was such in June and July. About the 28th or 29th of June Mr. Johnson, one of the defendants, brought me a petition addressed to some Federal official, I think the Postmaster General, signed by several hundred names, which at the time he told me was signed by railroad employees that were out on the strike. He said to me that he wanted that petition forwarded. The petition contained a request to the Postmaster General to
152 permit the mails to be carried—no, it was a petition by which the signers volunteered to carry the mails of the United

States with a locomotive and a mail car, and offered to render that service. The next day or the day after I returned that petition either to Mr. Johnson himself or to some one wearing a white badge with the letters "A. R. U." on it, who stated to me that he was a member of the A. R. U., and asked if I would give up that petition. I delivered it up to this person, who was either Mr. Johnson or some one about his build, stating to him that I didn't propose to use evidence in their own handwriting against them. At the time the petition was delivered to me by Mr. Johnson he said that these people—these names—were signed by the various persons, and in returning that petition I said I would return it because the Government didn't propose to convict them on evidence furnished by themselves.

Cross-examination:

The opinions of the witness on the 7th of July to the chief clerk of the railway mail service was that if he could not by reason of the strike move the mails on regular passenger trains he could move the mails to local points. The opinion expressly states that it referred only to local trains.

"Mr. DENIS: The Government rests, your honor.
"The COURT: Proceed with the defense.
"Mr. WILLIAMS: The defense rests."

153 The defendants claiming that they are entitled to a bill of exceptions to review the ruling upon their motion for a new trial and having presented the foregoing as such bill, the same is hereby allowed and settled as a correct statement of the proceedings had on the trial so far as it goes.

Dec. 24th, 1894.

ROSS, *Dist. Judge.*

(Endorsed:) No. 640. In the U. S. dist. court, southern dist. of California. United States of America, plaintiff, *vs.* W. H. Clune, Isaac Ross, and Phillip Stanwood, defendants. Bill of exceptions. Filed Dec. 24, 1894. E. H. Owen, clerk. Johnstone Jones, attorney for ——, room 6 Law building, Temple street, Los Angeles, Cal.

154 At a stated term, to wit, the August term, A. D. 1894, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the 24th day of December, A. D. 1894.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES, Plaintiffs, *vs.* W. H. CLUNE, ISAAC ROSS, and PHILLIP STANWOOD, Defendants.	No. 640.

On this 24th day of December, 1894, defendants being present in court in the custody of the United States marshal, George J. Denis,

Esq., United States attorney for the southern district of California, and Joseph H. Call, Esq., special assistant United States attorney, appearing as counsel for the Government, and W. T. Williams, Esq., George M. Holton, Esq., and Johnstone Jones, Esq., appearing as counsel for defendants, defendants thereupon present to the court their proposed bill of exceptions, which said bill of exceptions is thereupon settled and allowed by the court, and thereupon, on this 24th day of December, 1894, came the defendants, by their attorneys, W. T. Williams, Esq., George M. Holton, Esq., and Johnstone Jones, Esq., and filed herein and presented to the court their
155 petition praying for an allowance of the writ of error intended to be urged by them; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises; on consideration whereof the court does allow the writ of error upon the defendants giving bond according to law in the sum of five hundred dollars. It is further ordered by the court, on motion of said defendants' counsel, that said defendants each be admitted to bail pending the hearing of said cause, pursuant to said writ of error, on presentation to this court of a bond in the sum of five thousand dollars, with good and sufficient sureties to be approved by the court.

156 In the District Court of the United States for the Southern District of California.

UNITED STATES, Plaintiff, *vs.* W. H. CLUNE, ISAAC ROSS, and PHILIP STANWOOD, Defendants.	Order Allowing Writ of Error.

This 24th day of December, 1894, came the defendants, by their attorneys, W. T. Williams, Geo. M. Holton, and Johnstone Jones, and filed herein and presented to the court their petition praying for an allowance of the writ of error intended to be urged by them; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendants giving bond according to law in the sum of five hundred dollars.

ROSS, *Dist. Judge.*

(Endorsed:) No. 640. In the superior court, county of Los Angeles, State of California. United States of America, plaintiff, *vs.* W. H. Clune, Isaac Ross, and Phillip Stanwood, defendants. Order allowing writ of error. Filed Dec. 24, 1894. E. H. Owen, clerk. Johnstone Jones, attorney for ——, room 6 Law building, Temple street, Los Angeles, Cal.

157 In the Matter of the Qualification of Proposed Bondsmen of the Bonds of W. H. CLUNE, ISAAC ROSS, and PHILLIP STANWOOD.

Before E. H. Owen, as U. S. commissioner.

Mr. ZOBELEIN, being first duly sworn, testified as follows:

By Mr. DENIS:

Q. Mr. Zobelein, are you worth five thousand dollars over and above your debts and liabilities?
A. Yes, sir.
Q. How much do you own; how much property do you own?
A. Well, I own an interest in our brewery.
Q. How much is owed by the firm of Maier & Zobelein on the brewery, if anything? How much is owing on it?
A. I don't—you mean a mortgage and everything?
Q. Yes, sir.
A. We have got a mortgage of fifty thousand dollars.
Q. What do you consider, regardless of the assessment—this does not go over into the State courts at all—what is the brewery worth in your judgment?
A. About a hundred thousand dollars.
Q. And there is fifty thousand dollars due on it and you own half?
A. Yes, sir.
Q. Do you own any property unincumbered at all—that is, that there is no mortgage on?
A. No; I don't. I got some that is incumbered.
Q. You have got more than the brewery?
A. Yes; I have about twenty acres——

Mr. DENIS: That is satisfactory.

158 WILLIAM DOLENTY, being first duly sworn, testified as follows:

By Mr. DENIS:

Q. What is your name, if you please?
A. William Dolenty.
Q. You live in this city, Mr. Dolenty?
A. I do, sir.
Q. What is your business?
A. Well, I have been farming until recently.
Q. What property do you own in this district?
A. I own fifty-two feet on the corner of Buena Vista and Solano avenue.
Q. What is that worth?
A. Twenty-five hundred dollars.
Q. Do you own anything else now?
A. That is all I own.

Q. Is there a house on it?
A. No, sir.
Q. Is that incumbered?
A. Yes, sir.
Q. For how much?
A. Seven hundred dollars.

KATIE DOLENTY, being first duly sworn, testified as follows:

By Mr. DENIS:

Q. What is your name, if you please?
A. Katie Dolenty.
Q. Where do you live, Miss Dolenty?
A. Buena Vista and Solano.
Q. Do you own any property in this city?
A. Yes, sir.
Q. What do you own?
A. A house and lot.
Q. Where is it?
A. On the corner; on this corner.
Q. On Buena Vista street?
A. Yes, sir.
Q. What is that worth?
A. Three thousand five hundred dollars.
159 Q. Do you know what it is assessed for?
A. It has not been assessed yet.
Q. What was it assessed for last year?
A. I don't know; I didn't own the property then.
Q. How much did you pay for it?
A. For the property?
Q. Yes.
A. My father bought it and gave it to me.

Mr. DOLENTY: I traded property for it. I valued her lot at the time about twelve hundred dollars, and the house won't be assessed yet. Recently she built that house on it.

Q. How much did the house cost?
A. In the neighborhood of twenty-five hundred, I think.
Q. The house cost twenty-five hundred?
A. Yes.
Q. Do you owe anything on this house?
Miss DOLENTY: Yes, sir; four hundred and fifty dollars.
Q. That is all that is due on it?

Mr. DOLENTY: She can pay for it now if they will take the money.

Q. Do you live in the house?
A. Yes, sir.
Q. Your father's family live there?
A. Yes, sir.
Q. Is it homesteaded?
A. No.

GEORGE W. ARBUCKLE, first being duly sworn, testified as follows:

By Mr. DENIS:

Q. What is your name, please?
A. G. W. Arbuckle.
Q. Where do you live, Mr. Arbuckle?
A. Reside at 30——
Q. In this city?
A. Yes, sir.
160 Q. Are you in business here?
A. Yes, sir.
Q. What business?
A. Saloon business.
Q. What?
A. Saloon business.
Q. What are you worth, Mr. Arbuckle, over and above your debts and liabilities?
A. I consider myself worth two thousand dollars, anyway.
Q. Do you own any real property?
A. No, sir.
Q. Nothing but personal property?
A. No, sir.
Q. What does that personal property consist of?
A. Saloon; stock in it; both.
Q. What is that worth?
A. I consider the whole thing worth—stock and everything?
Q. Yes, sir. And fixtures and all that?
A. Oh, I would not—could not—exactly say what they are worth, but I would not take two thousand dollars for it.
Q. Is that subject to any debts at all?
A. No, sir.
Q. Don't owe anything on that at all?
A. No, sir.
Q. You sign for twelve hundred and fifty?
A. Yes, sir.
Q. You are willing to sign for twelve hundred and fifty?
A. Yes, sir.

161 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

Be it remembered that on this — day of December, A. D. 1894, before me, E. H. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil cases pending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared W. H. Clune, as principal, and George Zobelein, Katie Dolenty and William Dolenty, and Geo. W. Arbuckle, as sureties, and jointly and severally acknowledged themselves to be in-

debted to the United States of America in the sum of five thousand (5,000) dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The condition of the above obligation is such that whereas, at the August term of the district court of the United States of America for the southern district of California, held at the court-room of said court, in the city and county of Los Angeles, State of California, in said district, to wit, on the 21st day of November, A. D. 1894, W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson were convicted of the crime of conspiracy to commit an offense against the laws of the United States, to wit, to obstruct and retard the passage of the mails of the United States, committed on the 28th day of June,
162 A. D. 1894, in the county of Los Angeles, in the State of California, and within the jurisdiction of said court, contrary to the form of the statutes of the United States in such cases made and provided and against the peace and dignity of the said United States;

And whereas, on the 6th day of December, A. D. 1894, being a day in the term of said court, said W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson were, for said crime of which they stood convicted as aforesaid by the judgment of said court, ordered and sentenced to be imprisoned in the county — of Los Angeles county for a term of eighteen months;

And whereas said W. H. Clune, Isaac Ross, and Philip Stanwood have petitioned for a writ of error from the judgment of the said district court; which said writ of error has been duly allowed;

And whereas it has been further ordered that such writ shall operate as a stay of proceedings under the sentence;

And whereas the said W. H. Clune has been required to give recognizance, with sureties, in the sum of $5,000.00 for his appearance:

Now, therefore, if the said W. H. Clune shall personally appear at the Supreme Court of the United States, to be holden at the court-room of said court, in the city of Washington, District of Columbia, on the 4th day of February, A. D. 1895, to which said writ of error is made returnable, and afterwards whenever and wherever he may be required to answer in all matters and things that may be
163 objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises and not depart the said court without leave first obtained, and shall abide the judgment of the Supreme Court of the United States on said writ of error and render himself in execution thereof, then this recognizance shall be void; otherwise to remain in full force and virtue.

W. H. CLUNE. [SEAL.]
GEORGE ZOBELEIN. [SEAL.]
KATIE DOLENTY. [SEAL.]
WILLIAM DOLENTY.
GEO. W. ARBUCKLE.

Acknowledged before me the day and year first above written.

[SEAL.] E. H. OWEN,
U. S. Commissioner and Clerk U. S. District Court.

SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

George Zobelein, Katie Dolenty, William Dolenty, and Geo. W. Arbuckle, being each duly sworn by himself, deposes and says: George Zobelein, he is a householder in said district and is worth the sum of five thousand (5,000) dollars, and Katie Dolenty, that she is a householder in said district and is worth the sum of two thousand five hundred (2,500) dollars: William Dolenty, that he is a householder in said district and is worth the sum of twelve hundred and fifty (1,250) dollars, and Geo. W. Arbuckle, that he is a householder in said district and is worth the sum of twelve hun-
164 dred & fifty (1,250) dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

GEORGE ZOBELEIN.
KATIE DOLENTY.
WILLIAM DOLENTY.
GEO. ARBUCKLE.

Subscribed and sworn to before me this 24 day of December, A. D. 1894.

[SEAL.] E. H. OWEN,
Commissioner U. S. Circuit Court and Clerk U. S. District Court.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

ROSS,
District Judge.

(Endorsed:) No. 640. In the U. S. district court, &c. United States, plaintiff, *vs.* W. H. Clune *et al.*, defendant. Recognizance pending appeal. Filed Dec. 24, 1894. E. H. Owen, clerk. W. T. Williams, Geo. M. Holton, Johnstone Jones, attorney for defendants, room 6 Law building, Temple street, Los Angeles, Cal.

165 UNITED STATES OF AMERICA, } *ss:*
Southern District of California, }

Be it remembered that on this 7th day of January, A. D. 1895, before me, E. H. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of California to take acknowledgements of bail and affidavits and also to take depositions of witnesses in civil cases pending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Isaac Ross, as principal, and Martin Forrest, John Fisher, Omer Gee, Benj. J. Gardiner, Chas. A. Lee, Mrs. Margery Hanlon, W. Garms, F. Nieman, and W. D. Harris, Denis Shealey, and George Zobelein, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of 5,000.00 dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The condition of the above obligation is such that whereas, at the August term of the district court of the United States of America for the southern district of California, held at the court-room of said court, in the city and county of Los Angeles, State of California, in said district, to wit, on the 21st day of November, A. D. 1894, W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson were convicted of the crime of conspiracy to commit an offense against the laws of the United States, to wit, to obstruct and retard the passage of the mails of the United States, committed on the 28th day
166 of June, A. D. 1894, in the county of Los Angeles, in the State of California, and within the jurisdiction of said court, contrary to the form of the statutes of the United States in such cases cade and provided and against the peace and dignity of the said United States;

And whereas, on the 6th day of December, A. D. 1894, being a day in the term of said court, said W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson were, for said crime of which they stood convicted as aforesaid by the judgment of said court, ordered and sentenced to be imprisoned in the county jail of Los Angeles county for a term of eighteen months;

And whereas said W. H. Clune, Isaac Ross, and Philip Stanwood have petitioned for a writ of error from the judgment of the said district court, which said writ of error has been duly allowed;

And whereas it has been further ordered that such writ shall operate as a stay of proceedings under the sentence;

And whereas the said Isaac Ross has been required to give recognance, with sureties, in the sum of $5,000 for his appearance;

Now, therefore, if the said Isaac Ross shall personally appear at the Supreme Court of the United States, to be holden at the court-room of said court, in the city of Washington, District of Columbia, on the 4th day of February, A. D. 1895, to which said writ of error is made returnable, and afterwards whenever and wherever he may be required to answer in all matters and things that may be
167 objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises and not depart the said court without leave first obtained, and shall abide the judgment of the Supreme Court of the United States on said writ of error and render himself in execution thereof, then this recognizance shall be void; otherwise to remain in full force and virtue.

ISAAC ROSS. [SEAL.]
MARTIN FORREST. [SEAL.]
JOHN FISHER. [SEAL.]
OMER GEE.
BENJ. J. GARDINER.
CHAS. A. LEE.
MRS. MARGERY HANLON.
W. GARMS.
F. NIEMAN.
W. D. HARRIS.
DENIS SHEELEY.
GEORGE ZOBELEIN.

Acknowledged before me the day and year as respectively written in the following affidavits.

[SEAL.] E. H. OWEN,
U. S. Commissioner and Clerk U. S. Dist. Court.

168 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Martin Forrest, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

MARTIN FORREST.

Subscribed and sworn to before me this 26th day of Dec'r, A. D. 1894.

[SEAL.] E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk of U. S. Dist. Court.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

____ ____.
____ ____.

169 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

John Fisher, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

JOHN FISHER.

Subscribed and sworn to before me this 27th day of Dec'r, A. D. 1894.

[SEAL.] E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

170 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Omer Gee, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

OMER GEE.

Subscribed and sworn to before me this 27th day of Dec'r, A. D. 1894.

[SEAL.] E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

171 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Benj. J. Gardiner, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

BENJ. J. GARDINER.

Subscribed and sworn to before me this 28 day of Dec'r, A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

172 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Chas. A. Lee, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

CHAS. A. LEE.

Subscribed and sworn to before me this 29 day of Dec'r, A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
& Clerk U. S. Dist. Court.

173 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Mrs. Margery Hanlon, being duly sworn, for herself deposes and says that she is a householder in said district and is worth the sum of two thousand dollars exclusive of property exempt from execution and over and above all debts and liabilities.

MRS. MARGERY HANLON.

Subscribed and sworn to before me this 3rd day of January, A. D. 1895.

WM. M. VAN DYKE,
Commissioner U. S. Circuit Court.

174 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

W. Garms, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

W. GARMS.

Subscribed and sworn to before me this 3rd day of Jan'y, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk of U. S. District Court.

175 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

F. Niemann, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

F. NIEMANN.

Subscribed and sworn to before me this 4th day of Jan'y, A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

176 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

W. D. Harris, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of fifteen hundred (1,500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

W. D. HARRIS.

Subscribed and sworn to before me this 5th day of January, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
& Clerk of U. S. District Court.

177 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Denies Sheeley, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

DENIES SHEELEY.

Subscribed and sworn to before me this 7th day of January, A. D. 1895.

WM. M. VAN DYKE,
Commissioner U. S. Circuit Court.

178 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

George Zobelein, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

GEORGE ZOBELEIN.

Subscribed and sworn to before me this 7th day of Jan'y, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

ROSS,
District Judge.

(Endorsed:) No. 640. In the U. S. district court, southern district of California. United States of America, plaintiff, *vs.* W. H. Clune *et al.*, defendant-. Bond of Isaac Ross pending appeal. Filed Jan'y 7, 1895. E. H. Owen, clerk. Johnstone Jones, attorney for —— ——, room 6 Law building, Temple street, Los Angeles, Cal.

179 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

Be it remembered that on this 11th day of January, A. D. 1895, before me, E. H. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil cases pending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Philip Stanwood, as principal, and H. B. Meyer, Martin Forrest, Anthony Schwamm, P. I. Stack, Wm. Mead, A. McNally, W. H. Stoll, Fred. Colby, and Jacob Adloff, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of five thousand dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The condition of the above obligation is such that whereas, at the August term of the district court of the United States of America for the southern district of California, held at the court-room of said court, in the city and county of Los Angeles, State of California, in said district, to wit, on the 21st day of November, A. D. 1894, W. H. Clune, Isaac Ross, Pailip Stanwood, and A. T. Johnson were convicted of the crime of conspiracy to commit an offense against the laws of the United States, to wit, to obstruct and retard the passage of the mails of the United States, committed on the 28th day
180 of June, A. D. 1894, in the county of Los Angeles, in the State of California, and within the jurisdiction of said court, contrary to the form of the statutes of the United States in such cases cade and provided and against the peace and dignity of the said United States;

And whereas, on the 6th day of December, A. D. 1894, being a day in the term of said court, said W. H. Clune, Isaac Ross, Philip Stanwood, and A. T. Johnson were, for said crime of which they stood convicted as aforesaid by the judgment of said court, ordered and sentenced to be imprisoned in the county jail of Los Angeles county for a term of eighteen months;

And whereas said W. H. Clune, Isaac Ross, and Philip Stanwood have petitioned for a writ of error from the judgment of the said district court, which said writ of error has been duly allowed;

And whereas it has been further ordered that such writ shall operate as a stay of proceedings under the sentence;

And whereas the said Philip Stanwood has been required to give recognizance, with sureties, in the sum of $5,000.00 for his appearance:

Now, therefore, if the said Philip Stanwood shall personally appear at the Supreme Court of the United States, to be holden at the court-room of said court, in the city of Washington, District of Columbia, on the 4th day of February, A. D. 1895, to which said writ of error is made returnable, and afterwards whenever and wherever he may be required to answer in all matters and things that may be objected against him whenever the same may be prosecuted, and render
181 himself amenable to any and all lawful orders and process in the premises and not depart the said court without leave first obtained, and shall abide the judgment of the Supreme Court of the United States on said writ of error and render himself in execution thereof, then this recognizance shall be void; otherwise to remain in full force and virtue.

PHIL. STANWOOD. [SEAL.]
H. B. MEYER. [SEAL.]
MARTIN FORREST. [SEAL.]
ANTH. SCHWAMM.
P. I. STACK.
WM. MEAD.
A. McNALLY.
H. W. STOLL.
FRED'CK COLBY.
JACOB ADLOFF.

Acknowledged before me—

E. H. OWEN,
U. S. Commissioner.

182 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

H. B. Meyer, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

H. B. MEYER.

Subscribed and sworn to before me this 26th day of Dec., A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court and Clerk U. S. Dist. Court.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

—— ——.

183 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Martin Forrest, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilties.

MARTIN FORREST.

Subscribed and sworn to before me this 26th day of Dec., A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

The form of the foregoing bond and the sufficiency of the *f*ureties thereto is hereby approved.

—— ——.

184 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Anthony Schwamm, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

ANTH. SCHWAMM.

Subscribed and sworn to before me this 27th day of Dec'r, A. D. 1894.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk of U. S. Dist. Court.

185 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

P. I. Stack, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

P. I. STACK.

Sworn to and subscribed before me this 9 day of Jan'y, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
& Clerk U. S. Dist. Court.

186 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

William Mead, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (500) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

WM. MEAD.

Sworn to and subscribed before me this 10 day of Jan'y, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

187 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

A. McNally, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of two thousand dollars exclusive of property exempt from execution and over and above all debts and liabilities.

A. McNALLY.

Sworn to and subscribed before me this 10 day of Jan'y, A. D. 1895.

E. H. OWEN, [SEAL.]
Commissioner U. S. Circuit Court
and Clerk U. S. Dist. Court.

188 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

H. W. Stoll, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand dollars exclusive of property exempt from execution and over and above all debts and liabilities.

H. W. STOLL.

Sworn to and subscribed before me this 11th day of January, A. D. 1895.

WM. M VAN DYKE,
Commissioner U. S. Circuit Court.

189 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Frederick Colby, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of two thousand five hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

FRED'CK COLBY.

Sworn to and subscribed before me this 11th day of January, A. D. 1895.

WM. M. VAN DYKE,
Commissioner U. S. Circuit Court.

190 SOUTHERN DISTRICT OF CALIFORNIA, *ss:*

Jacob Adloff, being duly sworn, for himself deposes and says that he is a householder in said district and is worth the sum of one thousand (1,000) dollars exclusive of property exempt from execution and over and above all debts and liabilities.

JACOB ADLOFF.

Subscribed and sworn to before me this 11th day of Jan'y, A. D. 1895.

[SEAL.]

E. H. OWEN,
Commissioner U. S. Circuit Court
and Clerk U. S. District Court.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

ROSS,
District Judge.

(Endorsed:) No. 640. In the U. S. district court, southern district of California. United States of America, plaintiff, *vs.* Philip Stanwood *et al.*, defendant-. Bond of Philip Stanwood on appeal. Filed Jan'y 11th, 1895. E. H. Owen, clerk. Johnstone Jones, attorney for —— ——, room 6 Law building, Temple street, Los Angeles, Cal.

191 In the District Court of the United States in and for the Southern District of California.

UNITED STATES OF AMERICA, Defendant in Error,
vs.
W. H. CLUNE, ISAAC ROSS, and PHILIP STANWOOD, Plaintiffs in Error. } No. 640.

I, E. H. Owen, clerk of the district court of the United States in and for the southern district of California, do hereby certify that the foregoing 190 written and printed pages, numbered from 1 to 190, inclusive, and contained in one volume, are a full, true, and correct copy of the record, pleadings, and proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of the said district court this 17th day of January, A. D. 1895.

[Seal of the U. S. District Court, Southern Dist. of California.]

E. H. OWEN,
Clerk U. S. District Court in and for the
Southern District of California.

Endorsed on cover: Case No. 15,782. S. California D. C. U. S. Term No., 517. W. H. Clune, Isaac Ross, & Philip Stanwood, plaintiffs in error, *vs.* the United States. Filed January 31, 1895.

517

24

Office Supreme Court, U. S.
FILED
OCT 7 1895
JAMES H. MCKENNEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES.

W. H. CLUNE,
ISAAC ROSS AND
PHILIP STANWOOD,
Plaintiffs in Error,
vs.
UNITED STATES,
Defendant in Error.

BRIEF.

Error to the District Court of the United States for the Southern District of California.

BRIEF FOR THE PLAINTIFFS IN ERROR.

Filed September .....1895.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

W. H. CLUNE, ISAAC ROSS AND PHILIP STANWOOD, *Plaintiffs in Error,* vs. UNITED STATES, *Defendant in Error.*	BRIEF.

Error to the District Court of the United States for the Southern District of California.

BRIEF FOR THE PLAINTIFFS IN ERROR.

The plaintiffs in error were indicted in the District Court of the United States for the Southern District of California, for the crime of conspiracy to obstruct and retard the passage of the mails of the United States upon reg-

ular trains of cars of the Southern Pacific Company, a Railroad Corporation, within said Southern District of California, under Section 5440 of the Revised Statutes of the United States. The plaintiffs in error were found guilty, and a motion for a new trial and one in arrest of judgment having been overruled, it was adjudged that each of the plaintiffs in error be imprisoned in the County Jail of Los Angeles County, California, for the period of eighteen months.

The Supreme Court of the United States in *Pettibone vs. U. S.*, 148 U. S. 197, defined the crime of conspiracy as follows: "A conspiracy is a combination of two or more persons by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means;" and the crime is complete when such combination is formed and an act is done to further it. *U. S. vs. Wooten*, 29 Fed. Rep. 702; *In re Wolf*, 27 Fed. Rep. 606; REV. STATUTES of the U. S, Section 5440. The offense of obstructing and retarding the passage of mail is defined in U. S. Rev. Statutes, Section 3995. It may be here observed that it is a far graver offense to conspire to obstruct and retard the passage of the mail, than it is to actually obstruct or retard it.

To sustain this indictment it was necessary

for the Government to prove: (1.) That the conspiracy charged, i. e. an agreement to obstruct and retard the mail, existed. (2.) That the overt act charged was committed in furtherance of such conspiracy; and (3) that the plaintiffs in error were the conspirators.

U. S. vs. Newton, 52 Fed Rep., 275.

Brannon vs U. S., 15 Sup. Ct. Rep. 469.

We insist for the plaintiffs in error that the conspiracy charged, was not proven; that there was no evidence produced before the jury showing or tending to show the existence of a conspiracy to obstruct or retard the passage of the mail, or that the plaintiffs in error did any act with intent to obstruct or retard the mail; that the plaintiffs in error committed no overt act in furtherance of said alleged conspiracy; that the plaintiffs in error were in no sense of the word conspirators against the United States; and that the verdict was wholly unwarranted by the evidence.

That the plaintiffs in error were local officers of the American Railway Union; that as such they participated in the strike of 1894, performing certain official duties devolved upon them; that they, along with thousands of others, exercised their undisputed right to quit work, and that in consequence of the strike the Southern Pacific Railway ceased to be operated for lack of employees to man the trains, and the U. S.

Mail was thereby delayed, is true; but that these plaintiffs in error conspired together, or with others, to retard the mail, or to commit any offense against the United States, or that they made any threats or committed any acts of violence, or did the unlawful thing charged, is not supported by the evidence, and is wholly denied.

To prove the alleged conspiracy, the Court, after objection by the defendants, allowed certain telegrams to and from parties not named in the indictment, to be read in evidence. These telegrams are set out in full in the assignments of error numbered (2), (3), (4), (5) and (6), as well as many others to which the same objections were interposed.

Did these dispatches or any one of them prove or tend to prove an agreement on the part of the defendants to do an unlawful thing or a lawful act in an unlawful manner? Most of them conveyed the intelligence that a strike, or general tie-up, or boy-cott against the Pullman cars, had been ordered by the American Railway Union, acting through a convention of delegates; some gave information about the movement of trains, others referred to Pullman Cars, and nearly all contained such expressions as "stand firm," "sure to win," etc. But in none of them is there to be found a single expression to indicate the existence of a conspiracy or

agreement of any kind to retard or obstruct the passage of the mail.

To prove the charge against the defendants these dispatches were irrelevant, incompetent and immaterial; their introduction into the case was misleading, as it was calculated to impress upon the jury the idea that proof of participation in the strike was in itself proof of the alleged conspiracy to retard and obstruct the passage of the mail, as a delay of the mail was a necessary incident of the stoppage of the train. Merely to engage in a strike, where force and violence, or threats are not employe l, is not an offence against the law in the United States, nor in any other free country.

Even in monarchical England, strikes are legalized, and under the English Trade Union Act of 1871 and 1876, (the 34 and 35 Victoria Cap. 22, and in the 39 and 40 Victoria Cap. 31) construed with the Conspiracy and Property Act of 1875 (the 38 and 39 Victoria Cap 86), it has been held that no person can be prosecuted for conspiracy for committing an act that would not be criminal if committed by him singly, and consequently employers and employed alike may lawfully do in combination all that they would be entitled to do as individuals. Our late American authorities hold that workmen have the right to quit work singly or in a body, by preconcert or agreement, provi-

ded only that they do not interfere with the rights of others, whether the co-employees, employers or the public. They have the right to persuade others not to work if they are guilty of no violence, intimidation or such demonstration of force, as to overawe and cause employees to quit work from fear of personal danger. *United States vs. Kane*, 23 Fed. Rep. 748; *In re Wabash R. R. Co.* 24 Fed. Rep. 217.

These telegrams contained no threats, advised no physical violence or any other unlawful act; they were advisory and persuasive, or mere vehicles of intelligence, and expressions of opinions, nothing more, and had no reference whatever to the U. S. mail. The REV. STATUTES, Sec. 3995, plainly contemplates the use of physical means to obstruct or retard the passage of the mail; it does not inhibit mere persuasion; *U. S. vs. Kane*, 19 Fed. Rep. 42; *U. S. vs Thomas*, 55 Fed. Rep. 380; *U. S. vs. Sears*, Id. 268; *U. S. vs. Hart*, 1 Peters, C. C. R.; *Secor vs. T. P. & W. R. Co.*; 7 Bissel 516.

In the case of *U. S. vs. Kirby*, 7 Wallace 485, the Court says: "That Sec. 3995 applies only to those who know that the acts performed by them, obstructing or retarding the passage of the mail, or its carriers, will have that effect and perform them with the intention that such shall be their operation. When the acts which create the obstruction are in themselves un-

lawful, the intention to obstruct will be imputed to their author, although to attain other ends may have been his primary object. The Statute *has no reference to acts lawful in themselves from the execution of which a temporary delay to the mail inevitably follows.*" It follows from this statement of the law that if the strike in which the plaintiffs in error were engaged was lawful in itself, the fact that the mail was incidentally retarded, does not bring them within the purview of the statute.

Many of these telegrams were inadmissible on the further ground that they related to matters and things occurring subsequent to the commission of the alleged overt act and consummation of the conspiracy charged in the indictment.

If this was an indictable conspiracy it was consummated when an overt act in futherance of the common intent was done, and this act was charged to have been committed on June 28, 1894; hence, so far as this indictment is concerned, the conspiracy was at an end on June 28, 1894, and any evidence of acts or declarations subsequent thereto was incompetent. *Logan vs. U. S.*, 144 U. S. 263; *Brown vs. U. S.*, 150 U. S. 93; 1 *Greenleaf Ev.*, Sec. 111. 3 Id. Sec. 94.

The only evidence of any personal act or declaration of defendants, (excepting the tele-

grams) was that of Finn as to the conversation of July 3, 1894, and that was incompetent for reasons last stated; but this evidence does not indicate the existence of the conspiracy charged, nor tend to prove it, but only that plaintiffs in error did what they had a right to do, to-wit: ask witness to go out on a strike with them.

The telegram dated Chicago, Ill., June 26, 1894, addressed to W. H. Clune, Los Angeles, signed Eugene V. Debs, and containing the following words, "Boycott against Pullman cars in effect at noon today by order of convention," (being Government Exhibit No. 21,) was not admissible upon any ground. It was a mere statement of fact by a person who was not shown by the evidence to have been at that time engaged in a conspiracy to obstruct or retard the passage of the U. S. mail on trains of cars of the Southern Pacific Co.

The relation or connection between said Eugene V. Debs and the plaintiffs in error was not shown by any evidence; besides, it was not shown that the telegram was sent by or authorized by said Debs; and, furthermore, the telegram was immaterial to the issue, as it was a mere statement of fact and has no tendency whatever to prove the existence of any conspiracy to obstruct or retard the mail or to do any other unlawful act. Upon no grounds

were these telegrams, or any one of them, admissable in evidence, and they should have been rejected. The conspiracy charge is not shown to exist by this telegram, or other proof.

In the next place, it is well settled that it is necessary to a conviction under Sec. 5440 of the Rev. Statutes not only for the Government to prove the conspiracy, to commit an offense, but also some act designed to carry into effect the object of such conspiracy. *Dealey vs.* U S., 152 U. S. 539; U. S. *vs. Wooten*, 29 Fed. Rep. 703; U. S *vs. Lancaster*, 44 Fed. Rep. 896; *Bannon vs* U. S. 15 Sup. Ct. Rep 469 and cases cited.

Without the conspiracy charged having been proven the Court allowed the witnesses for the prosecution to testify, after objection by the defendants, to the acts, conduct and declarations of Gallagher and Buchanan in the absence of the plaintiffs in error. This we insist was error. The objections to the admission of testimony on this ground, are embraced in the assignments of error, Nos. 1 and 8. While it is true that when an illegal combination is proven, declarations and conduct of one conspirator about the enterprise are evidence against co-conspirators; *Lincoln vs. Claflin*, 7 Wallace 132; *Sundry Goods vs.* U. S., 2 Pet. 358; *Nudd vs. Burrows*, 91 U. S. 426; *Logan vs.*

U. S., 14 U. S. 263; yet, until an illegal combination or conspiracy is shown to exist and the relation of co-conspirators is established, it is error to admit evidence of declarations or conduct of one in the absence of the others. It is essential that proof of concert and connection must be given before evidence is admissible of the acts or declarations of any person or persons not in the presence of the prisoner. *3 Russell on Crimes*, (9 Ed.) 161; *3 Rice on Evidence*. Sec. 578d; *Nudd vs Burrows*, 91 U. S. 426. It needs no argument to demonstrate the proposition that the acts and conduct of Gallagher and Buchanan, would not be evidence against the defendants unless they were proven to be co-conspirators.

There must have been concert of action between defendants and Gallagher and Buchanan —an agreement to retard and obstruct the mail, or do an unlawful act, before evidence of declarations or conduct of the latter, in the absence of the former, could be competent. *U. S. vs. Kane*, 23 Fed. Rep. 748; *U. S. vs. Lancaster*, 44 Fed. Rep. 896; *Hicks vs. U. S.*, 150 U. S. 442.

The only evidence apparently relied on to show connection at all was the declaration of Gallagher that he had a dispatch authorizing him to do what he did, and that was from E. V. Debs saying "Boycott against Pullman Cars in

effect at noon today by order of convention."

As it was necessary to allege an overt act in pursuance of a conspiracy, so it was necessary to prove it as alleged.

The indictment charged the overt act to have been committed on June 28, 1894, and all the evidence relating to the overt act is confined to acts and conduct on June 27, 1894. This evidence was irrelevant to the issue, even if not incompetent, because no proper foundation was laid by first proving the connection of Gallagher and Buchanan with the plaintiffs in error. But even if it is conceded that the combination to strike was proven; that plaintiffs in error and Gallagher and Buchanan were parties to that combination; that the acts, conduct and declarations of said Gallagher and Buchanan were such as to overawe the employees of the Southern Pacific Railroad and cause them to quit work from fear of personal violence, and that the mail was thereby obstructed and retarded; that the overt act was on the day alleged in the indictment, yet the plaintiffs in error cannot be held responsible for such declarations, acts, and conduct, beyond the common intent and purpose; for such ~~alleged~~ agreement and combination, did not authorize the resort to menaces, threats, intimidation or violence. The agreement to strike being lawful and not unlawful, the acts

of Gal agher and Buchanan cannot bind plaintiffs in error. It is only when the agreement is to do an unlawful act or a lawful act in an unlawful manner, that the conspirators are held responsible for the acts of co-conspirators in furtherance of such unlawful intent. *U. S. vs. Kane Supra; U. S. vs Lancaster Supra; Fur Co. vs. U. S.*, 2 Pet. 366.

But, if it be admitted for the sake of argument, that the acts of Gallagher and Buchanan caused the delay of the mail, it may be questioned if such acts were unlawful, inasmuch as the evidence discloses the use of no force or violence or threats against the fireman, engineer, or other employees, in charge of the train, and hence, according to *Kirby's* case the statute would not apply. The act not being unlawful, no intention to obstruct the passage of the mail could be imputed to the author.

Lastly, it is necessary that the guilt of the plaintiffs in error should be finally established by evidence of their own acts. *3 Rice Ev.*, Sec. 579, and cases cited. The overt acts here referred to must be acts of force or violence, or threats to use force or violence, whereby persons or employees engaged in carrying the mail, would be intimidated and forced to desist from the performance of such duty.

Persuasive words and conduct are certainly not contemplated by the statute. See cases already cited.

In the *Debs case*, 158 U. S. 568, the bill of complaint averred acts of force and violence—derailing and wrecking engines and trains, locking switches, turning switches, displacing and destroying signals, assaulting and interfering with and disabling the switchmen and and other employees, etc. The bill of injunction commanded the defendants to desist and refrain from various and sundry acts of force and violence.

In the opinion of the Court Justice *Brewer* says, on page 597–598, "The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels, and the mails are carried."

Where, in our case, is there any evidence of an overt act of plaintiffs in error, or any one of them, committed in pursuance of a conspiracy to obstruct or retard the passage of the mail? What act of force or violence or threats to use force or violence is shown? There is not in all the record a scintilla of evidence of this kind against the plaintiffs in error, or any one of them.

We contend further, that the Court erred in using the following language in the charge to

the jury: "If there was any conflict in the testimony upon any point involved in the charge, the Court would discharge you from its further consideration, but the testimony on the part of the Government is without conflict, and there is no evidence on the part of the defense at all. * * *

"You have not the right to arbitrarily reject sworn testimony and written evidence given in a court of justice, and any juror who does so arbitrarily disregard such testimony, violates his oath of office and his duty as a good citizen."

The obvious coercive tendency of such language from the Court is the more apparent when it is considered that these objectionable instructions were given to the jury after they had been out considering their verdict for the space of 23 or 24 hours, and when it appeared to the Court that they had not agreed upon their verdict.

The Judge has the right to express his opinion upon the facts; *Simmons vs. U. S.*, 142 U. S. 148; but he exceeded his license in this instance. In *U. S. vs Taylor*, 3 McCrary 500, the Court say: "The right of a jury in criminal cases to pass upon questions both of law and fact is the necessary result of the jury system, so long as the right of the jury to find a general verdict remains; for the general ver-

dict necessarily covers both the law and fact, and embodies a decision based upon and growing out of both.

"While the Court is the Judge of the law, and may instruct the jury upon the law, and while it is the duty of the Jury to receive the law from the Court, it is still within the power of the jury to render a general verdict, and thereby to decide on the law as well as the facts.

"Although the defendant in a criminal case calls no witness to contradict the witnesses for the prosecution, yet the jury may still judge of the credibility of those witnesses and may consider whether upon applying all the tests of manner, clear or confused statement, prejudice and accuracy of memory, they are to be believed. It was in the province of the jury to disbelieve the witnesses for the Government." *Starr vs. U. S.*, 153 U. S. 614; *Hickman vs. Jones*, 9 Wallace 201; *Nudd vs. Burrows*, 91 U. S. 426. Again in *R. R. Co. vs. Stout*, 17 Wallace, 657, the Court say: "Though it is true in many cases that when the facts of a case are undisputed the effect of of them is for the judgment of the Court and not for the decision of the jury; this is true in that class of cases where the existence of such facts come in question, rather than when decisions or inferences are to be made from

them. And whether the facts be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case is properly left to the jury."

This instruction of the Judge was not a mere expression of opinion on the facts; it virtually left the Jury no alternative but to convict. It was in effect to tell the Jury that as a question of law they must convict, and if they failed to do so they would violate their oaths of office as good citizens, notwithstanding the evidence was such that "different minds might honestly draw different conclusions from them."

To sum up the argument for the plaintiffs in error, we contend:

1. That the telegrams were incompetent, irrelevant and immaterial, in that they did not prove, or tend to prove the charge in the indictment, to-wit: A conspiracy to obstruct and retard the mails.

2. That evidence of the various witnesses as to the declarations and acts of Gallagher and Buchanan on June 27th, was incompetent and irrelevant because:

a No foundation for it was laid, at any time during the course of the trial, by proving the conspiracy charged, and their connections with plaintiffs in error.

b The declarations and acts did not ob-

truct and retard the mail in the contemplation of the Rev. Stat., Sec. 3995, as there was no evidence of force or threats of personal violence;

c The declarations and acts if they did retard and obstruct the mail were not those charged in the indictment, and the evidence was therefore incompetent, and there was a fatal variance between the indictment and the proof.

3. Plaintiffs in error would not be responsible and could not be convicted for the acts of Gallagher and Buchanan if the latter went beyond the common purpose to strike or quit work; because an agreement to strike is not unlawful, and the plaintiffs in error were not present at the time of the said overt acts.

4. The instructions of the Judge were erroneous in that they invaded the province of the jury.

For reasons above stated, plaintiffs in error ask a new trial.

John Stone, Jones

W. T. Williams.

Geo. M. Stollon.

Attorneys for Plaintiffs in Error.

FILED.
NOV 1 1895
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

W. H. CLUNE,
ISAAC ROSS AND
PHILIP STANWOOD,
Plaintiffs in Error,

vs.

UNITED STATES,
Defendant in Error.

Authorities referred to by counsel of plaintiffs on Argument and not on Printed Brief.

United States vs. Clark; 13th Philadelphia, p. 476.

Postal laws and regulations (1893), p. 288.

TOUCHING PROPOSITION THAT ON COMPLETION OF THE OVERT ACT THE CONSPIRACY MERGES.

Hartman vs. Commonwealth; 5th Penn. State Rep., p. 60.

Williams vs. Commonwealth; 34th Penn. State Rep., p. 178.

Rex. vs. Mary Doran; Leach's Crown Law, p. 608.

Commonwealth vs. Kingsbury; 5th Mass. Rep., p. 106.

Scott vs. the Commonwealth; Serg. & Raw., Vol. 5, p. 224.

Reg. vs. Rowlands et al; 5 Cox's C. C., p. 497 et seq.

Reg. vs. Boulton; 12th Cox's C. C., p. 93.

RULE ON FAILURE TO TESTIFY BY ACCUSED.

Wilson vs. The United States; 148 U. S. p. 50.

Trivial offenses not subject to indictment for conspiracy. 2d Wharton. Precedents of Indictments and Pleas, p. 128. (Note.)

SECTIONS OF REVISED STATUTES REFERRED TO.

Sections 3890, 3899, 3909. (Affidavits of publishers.)

ROBERT CHRISTY,
Of Counsel for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
OCT 18 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

W. H. CLUNE, ISAAC ROSS, AND PHILIP Stanwood, plaintiffs in error,
v.
THE UNITED STATES.
No. 517.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

W. H. CLUNE, ISAAC ROSS, AND PHILIP Stanwood, plaintiffs in error,
v.
THE UNITED STATES.

No. 517.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

Many errors were assigned which are not mentioned in the brief for the plaintiffs in error. I shall assume that such assignments of error are abandoned and confine my attention to those which are discussed in the brief.

STATEMENT.

Plaintiffs in error were convicted of conspiring to obstruct and retard the mails.

The admissions made in the brief show the nature of the case, viz:

> That the plaintiffs in error were local officers of the American Railway Union; that as such they

> participated in the strike of 1894, performing certain official duties devolved upon them; that they, along with thousands of others, exercised their undisputed right to quit work, and that in consequence of the strike the Southern Pacific Railway ceased to be operated for lack of employees to man the trains, and the U. S. mail was thereby delayed, is true. (Bottom of p. 3.)

The brief then proceeds:

> but that these plaintiffs in error conspired together, or with others, to retard the mail, or to commit any offense against the United States, or that they made any threats or committed any acts of violence, or did the unlawful thing charged, is not supported by the evidence, and is wholly denied. (Top of p. 4.)

The record does not profess to set out all the evidence, nor to show the nature and tendency of what is omitted. The certificate of the trial judge is merely that the bill of exceptions "is a correct statement of the proceedings had on the trial, *as far as it goes*" (p. 78). Counsel have no right, therefore, now to argue the weight or sufficiency of the evidence, but can complain only of error to their prejudice in the rulings of the court.

The manner in which plaintiffs in error, "along with thousands of others, exercised their undisputed right to quit work" appears, however, from the evidence which is set out in the record upon exceptions to its admission, which evidence was not disputed, the prisoners having declined to offer any evidence.

James W. Erwin, post-office inspector, started June 27 to go from Los Angeles to San Francisco on the train of the Southern Pacific Railroad carrying passengers and

mail. He went into the mail car where there was United States mail. After proceeding a short distance the train stopped.

> A crowd of people collected around the locomotive of the train, and two men, whom witness did not know, addressed themselves to the fireman, begging him not to go out on the locomotive, and *threatened him if he did go*. Most of the talking was done by a man named Gallagher, who called the fireman a "scab," and said to him, "If you go out to-day you will make a big mistake and you will regret it." The witness about that time stepped up and introduced himself as the post-office inspector, and said that there was a quantity of United States mail in the postal car and warned them if the train did not go out they would be responsible for it. They desisted from talking with the fireman and moved back a little ways, but one of them, the one who had done the most talking, beckoned several times to the fireman, who finally threw down his gloves, and the train did not go out. (Record, p. 25.)

George Odell, conductor on the same train, testified that—

> Gallagher called the fireman a "scab," a "son of a bitch," and all kinds of names, and that train did not leave River Station for its destination that day at all. (Rec., p. 35.)

William Stewart, the engineer, testified that—

> He backed his engine down to couple on the Pullman cars. Gallagher and Buchanan tried to persuade him not to couple on to them. They said there had been a boycott declared that day at noon, and *it would not be well* to couple on. (Rec., p. 37.)

J. A. Muir, division superintendent of the Southern Pacific Railroad, testified, speaking of the same train (Rec., p. 61), that—

> Train No. 18 was regularly made up, including the United States mail, on June 27. It proceeded from the Arcade depot to River Station. *There it was stopped.* It was late in starting from the Arcade depot; it was delayed by two representatives of the American Railway Union, who stated that *they were authorized to prevent the train from moving.*

This was the beginning of the strike, and the witness testified, speaking of the mail train, (Rec., p. 60), that—

> It did not leave the Arcade depot on June 28. The first date upon which the United States mails were carried by the Southern Pacific Company from the Arcade depot to San Francisco was about July 12.

Further details of the manner in which those engaged in the strike exercised "their undisputed right to quit work" are shown by the testimony of this witness (p. 62), from which it appears that they claimed and exercised authority over trains and employees of the railroad on its own premises and, when ordered off, went to the ticket window and bought tickets to a station near by, and thereupon declined to leave the premises, claiming to be passengers ready to proceed on the train which, at the same time, they were detaining.

D. Burkhalter, also division superintendent of said company, testified that—

> They did not operate their railroad trains, their regular passenger trains, on the 28th and 29th and up to the 10th of July, as they had been in the habit

of doing theretofore. *The reason why they did not was on account of the strike.* That strike was inaugurated by an organization known as the American Railway Union.

Witness was present at a conversation June 28 between Mr. Muir, one of the officers of the road, and Stanwood, one of the plaintiffs in error.

> Witness suggested to Mr. Muir that they make request of Stanwood to *allow* train No. 20, which had arrived the evening before, to proceed to San Francisco. That was the train coming from El Paso. Mr. Stanwood came down, and witness and Mr. Muir represented to him that, inasmuch as train No. 20 had started from its originating point before the strike was called, that passengers and mail had *started before the strike was called, that they should not detain it;* that all other trains that had started under the same circumstances from their originating point before the strike was called had been allowed to go through on the line of the Central, and that Southern Pacific No. 19, that had arrived at Los Angeles, had gone on through. They tried to impress Stanwood with the idea that it was wrong to *delay the train* under those circumstances, as it was working a hardship on people who had started from their homes and knew nothing of the strike, and also was *holding mail* that had started with the train before the strike was called. They had quite a long talk with Stanwood, and he said he would go up and call a meeting and let them know at 10 o'clock, if they would meet him at the river station.

At the appointed time Johnson (who was tried and convicted with plaintiffs in error, but declined to be included in these proceedings and was sentenced at his own request—Rec., p. 21) came to witness at the ap-

pointed place and asked if he and Muir were waiting for the reply. On being told that they were Johnson went across the way in the direction of the hall where the meetings of the strikers were generally held and returned in a short time with the answer in writing (Rec., p. 64) refusing the request, signed by Johnson and approved by Stanwood and Ross. (Ex. 46, p. 67.)

Frank E. Prior, who was present at the conversation with Stanwood, testifies that, the rights of the public being mentioned, Stanwood said, "Damn the public; we are fighting for our rights" (p. 65).

Stanwood was president of the A. R. U. organization, and said he could not give his permission "without conferring with his colleagues" (p. 66).

J. J. Finn, general yard master of the Southern Pacific, knew the four defendants. Clune was then *keeping a cigar store* and was not in the employ of the railroad company. Johnson was a brakeman, Stanwood a member of the yard crew, and Ross a conductor.

> After the 27th of June witness had a conversation with Mr. Clune about joining the strike. Mr. Clune asked witness to go out. Mr. Clune and others sent for witness * * * and witness went up to see them. * * * By "others" witness means the other three defendants and several other persons who were present.

This was the night of July 3, while the strike was still on and no trains were running (p. 70). They sought to induce the witness to quit work.

> Witness asked them if he did not go out what would be the consequence, and he said "*You know what the consequences are.*" The witness said, "Well,

I won't be called a scab and I will go out or resign." They didn't say what the consequences would be. Witness went and resigned. Witness said he went out because he didn't want to be called a scab. His experience had been that a man that is called a scab is branded as such and marked up everywhere all over the country, every place on cars and buildings, and everything of that kind, and it has the effect that if a man goes to look for a position elsewhere that as a general rule they won't work with him on that account—that is, the employees of most any road won't work with him on that account. That is what has been the rule heretofore. Witness' experience was that *a scab is subject to insult or offensive behaving from fellow railroad men.* It was for that reason that witness resigned from the employ of the company.

To the same effect as to the implied threat and its consequences, see George E. Lewis, fireman, page 74.

M. H. Flint, post-office inspector, met Ross and Johnson in the office of the United States attorney June 28, where they were endeavoring to learn from the attorney the extent of the law forbidding interference with the mails with a view of cutting off the engine and mail car from the train, and thereby avoiding the penalty of the law.

The objections made to the introduction of this testimony will be considered with those made to the admission of certain telegrams.

I will save the court trouble by referring to a few of these dispatches from which the character of all may be seen.

With the same confusion of ideas which prevailed among the strikers and those in command of them, coun-

sel, speaking of these dispatches, say, "Most of them conveyed the intelligence that a strike, or general *tie up*, or *boycott* against the Pullman cars had been ordered by the American Railway Union," etc. (p. 4, brief). The implied admission made here is entirely unconscious. A "tie up" and a "boycott" are evidently referred to as meaning the same as the exercise of "the undisputed right to quit work" mentioned on the preceding page. So, when counsel say further (p. 4), "some gave information about the movement of trains," etc., it did not seem to occur to them that an explanation was needed why those who had merely quit work were interested in the movement of trains.

Exhibit No. 26, page 32, June 27, to G. T. Bishop, secretary, Oakland, Cal., says, "Stand firm, will boycott at Los Angeles this p. m." Signed W. H. Clune, secretary, T. C. Gallagher.

Exhibit 31, page 33, June 27, to P. McInery, Oakland, Cal., says, "Everything at standstill, carry on the good work." Signed Philip Stanwood, president, W. H. Clune, secretary. The same message was sent on the same day by Stanwood and Clune to many other persons at different points.

Exhibit 3, page 28, dated June 28, to H. A. Knox, Sacramento, signed "W. H. Clune, secretary," and "Philip Stanwood, president," says, "General tie up ordered—advise all employees." At the same time a large number of similar dispatches were sent, signed in the same manner, to various persons in California, Utah, and Nevada. (See Exhibits 7 to 18, pp. 29 and 30.)

Exhibit 4, page 29, June 28, to E. V. Debs, Chicago, says, "Southern Pacific arranged to run three trains, Pullman's, to-night—board mediation ordered general tie up—give us your sanction quick. Sure to win." Signed W. H. Clune, secretary.

The connection between Debs and Clune appears from Exhibit 21, page 30, June 26, 1894, from Eugene V. Debs, Chicago, to W. H. Clune: "Boycott against Pullman cars in effect at noon to-day by order of convention."

Exhibit 19, page 30, June 29, from Philip Stanwood to Barrett, Bakersfield, says, "*Have stopped train* at Mojave; come to Los Angeles with engine and caboose."

Exhibit 20, July 10, W. H. Clune, secretary, to L. B. Hays, Tucson, says, "No. nineteen and one freight train left here this morning—*everybody on the train are 'scabs.' Hold them there.* Sure to win."

Exhibit 27, page 32, July 10, W. H. Clune, secretary, to P. E. Stillwagon, Indio, Cal., says:

> "Scabs" sneaked out of here this morning under protection of troops. One B. T. L. F. man out of entire membership "scabbed." *Hold them at Indio if they reach there.* Freight train went out this a. m. under guise as relief train for desert, *if not as represented hold them and wire us.* All are solid at every point; all good men at their posts. Will win on lines laid down. Determined sure to win. All protected under our banner.

Exhibit 28, page 33, July 10, Clune advises L. B. Hayes, Tucson, Ariz.:

> Freight and passenger train left here this morning under guard of troops in the guise as relief

trains for desert manned by "scabs." Pay no attention to press reports. All points west of here solid to a man. Sure to win.

The best answer to what counsel say about the significance of these dispatches (pp. 4–7, brief) is to read them in connection with the testimony above recited and in view of the historical fact, that on the dates in question violence and bloodshed were being used in many places, and threatened in all, to stop railroad trains, the American Railway Union, controlled by Eugene V. Debs, being the head and front of the organized movement—a state of affairs which called forth a proclamation by the President and required the use of the Federal Army to suppress the mob, protect life and property, and restore order.

It is said (Brief, p. 7) that many of these telegrams, as well as much of the testimony, were inadmissible because they related to a time subsequent to the time named in the indictment; but the evidence is undisputed that the attempt of the American Railway Union to stop the movement of trains in the United States, so far as it was carried on by the plaintiffs in error or those connected with them, commenced June 27 and continued in active continuous operation for two weeks. What was said or done in pursuance of that design during that entire period would therefore not come within the rule excluding subsequent acts and statements to which counsel refer, but would fall within the rule which admits all parts of a transaction. It is always a question of *res gestæ*. While the offense charged was consummated, as counsel say, when the first overt act was done, so as to be the subject of prosecution, it does not follow, as they further say,

that "the conspiracy was at an end at that time" so as to render its subsequent course irrelevant in an inquiry concerning that act or any other act done while it was on foot.

Even independent acts of the same class are always competent to show knowledge, motive, or design.

In urging the irrelevancy and incompetency of the telegram of Debs to Clune, above quoted, counsel entirely ignore the telegram from Clune to Debs, also above quoted, which furnishes a complete answer to the objection. It was entirely immaterial who Debs was or what relations he had with the accused; it was sufficient that a communication was had with him by them with relation to the conspiracy, while it was on foot. If one side of the correspondence by telegraph be competent, the other necessarily is competent also. The telegram from Debs was not offered to prove the truth of the statements it contained, but to explain the meaning and throw light on the motive of the telegrams and conduct of the accused. If, however, any further showing as to Debs or the relations of the accused with him was required, the state of the record requires the assumption that such showing was duly made.

The same considerations dispose of the argument (brief, p. 9) as to the foregoing testimony concerning the conduct and declarations of Gallagher and Buchanan in the absence of the accused, and that (brief, p. 10) as to the admission of such testimony in advance of proof of conspiracy. The authorities cited by counsel show that the order of proof, even in cases of conspiracy, is within the discretion of the court. And, without resorting to the presumption as to what does not appear, the record

shows that proof of connection between the two men named and the accused was given. Exhibit 45 (p. 61) was a paper posted on the bulletin board at River Station and signed by all four of the accused, by Clune as secretary and by the other three as "Board Mediation A. R. U., Local Union No. 80."

It was a proclamation reciting the strike of the Pullman employees and declaration of a boycott by the American Railway Union, and "the fact that the Southern Pacific Company have made arrangements to run three trains of Pullman cars out of Los Angeles tonight." It further declared, "We deem it prudent *to declare a general tie up.*" "*We beg you to give us your united support.*" This proclamation was not addressed, but was evidently directed to the employees of the Southern Pacific Company because posted on its bulletin board. The exact time when it was posted does not appear in the record, but it must be assumed that it was shown to have been posted at a time which would make it relevant to the issue. It does appear that it was permitted to remain on the bulletin board for a day or two, which clearly shows the threatening atmosphere prevailing. The same witnesses who testified to the acts and conduct of Gallagher and Buchanan testified at the same time that the latter displayed messages and dispatches which, they claimed, gave them authority to act as they did.

> "The dispatches were addressed to W. H. Clune. One of them was from Bishop, of Oakland, or Rogers; the other was signed E. V. Debs" (p. 37). (See also p. 72.)

From the various facts above given, it is clear that Gallagher and Buchanan were members of the A. R. U. Lodge No. 80, of which the accused were all officers and in active command.

Counsel do not venture to claim that it was necessary to prove an express agreement to "tie up" and "boycott" between the persons engaged in the conspiracy which the evidence shows was entirely successful. They admit that it was sufficient to prove "concert of action" to "do an unlawful act." The conspiracy was to stop the running of trains on the Southern Pacific Railroad and interfere with its business, thereby necessarily delaying the mails. The difference between such a plot and merely quitting the employment of the company is well settled. (See *Crump* v. *The Commonwealth*, 84 Va., 927; *Dell* v. *Winfree*, 80 Tex., 400.)

The common purpose being to delay and obstruct the trains, which as the accused all knew carried the mails, by trespassing upon the property of the railroad company and by the use of abusive language and moral intimidation, causing those in charge of its trains to abandon them even if no threats of personal violence were made or implied, it surely can not be contended that each of the persons engaged in this unlawful undertaking can escape the consequences by failure of proof that the specific means employed by the conspirators who acted were expressly authorized by the others.

I have recited the facts disclosed by the record merely to show the court the nature of the case made, so far as it is disclosed thereby, but—

> As the verdict was sustained by the trial judge, we must assume that the testimony, only a small portion of which is before us, was sufficient to establish the guilt of the defendant, and unless error is disclosed in the special matters presented to our consideration the judgment must be affirmed. (Mr. Justice Brewer in *Allis* v. *U. S.*, 155 U. S., p. 119.)

I submit that all the evidence disclosed by the record was properly admitted as part of the very event in question, and its sufficiency can not here be questioned.

A further ground of error presented in the brief (pp. 13–16) is the further instructions by the court after the jury had failed to agree. The assignment of error (p. 38) gives an extract from these instructions (which are given in full, pp. 17, 18) with the statement,

> These instructions were given to the jury after the jury had been out considering of their verdict for the space of twenty-three or twenty-four hours, and when it appeared to the court that they had not agreed upon their verdict.

It appears (p. 13) that the jury, having retired to consider of their verdict on November 20, came into court at 10.30 a. m. November 21—whether at their own request or otherwise does not appear—and being asked whether they had agreed upon a verdict, replied that they had not. The entry then recites further that—

> Thereupon, the court further instructs the jury by reading written instructions to them, *all of which is*

excepted to by the defendants' attorneys. The jury then retires to consider of their verdict.

The exception was a general one specifying no grounds. It was not stated whether the objection was to the time when the instructions were given or to the instructions themselves, nor does it clearly appear whether the instructions were given in compliance with a request from the jury or without it.

It is now argued that the action of the court was an attempt to coerce the jury or an invasion of their province. But I submit, upon the principles relating to exceptions in such cases, so well stated by Mr. Justice Brewer in *Allis* v. *United States* (*supra*), at page 122, that this ground of error can not be considered. It was the duty of counsel to bring clearly to the attention of the trial court the nature of his objection, so that, if well taken, the error might then have been corrected.

> A party must make every reasonable effort to secure from the trial court correct rulings or such at least as are satisfactory to him before he will be permitted to ask any review by the appellate tribunal; and to that end he must be distinct and specific in his objections and exceptions, etc. (*Id.*)

The exception was indefinite as to whether it was directed to the time at which the instructions were given or to the instructions themselves; if it was to the former, it is settled by *Allis* v. *United States* (supra) at page 123, that it was proper for the court of its own motion so to recall and further instruct the jury; if it was to the latter, the exception was insufficient because it is directed to the additional instructions as an entirety, and therefore they

must have been entirely wrong to make the exception available. I submit that the instructions were correct as a whole and in all their parts. They first simply reminded the jury that there was no conflict in the testimony on the part of the Government and no evidence whatever on the part of the defense. This was true. In the part of the general charge set out in the record the jury had been cautioned to make no inference from the failure of the accused to testify (p. 16). They then told the jury that they had no right arbitrarily to reject sworn testimony and written evidence. There was no effort, as counsel claim, to pass upon the effect of the evidence. The jury were merely told in substance that they must duly weigh the undisputed evidence and could not arbitrarily disregard it. Such a charge would certainly have been proper as part of the general charge. It was one of the general instructions which are proper in any case and were peculiarly so in this. As no exception was specifically taken to the time when the charge was given, it must be considered as though it had been given in connection with, and as part of, the general charge.

Taking the arguments for plaintiffs in error as summed up at the end of the brief, we briefly reply in their order:

(1) Whatever significance the telegrams may have had or may have lacked, they were a part of the history of the very event in question, and therefore necessarily competent evidence.

(2) (*a*) The record discloses evidence proving or at least tending to prove the conspiracy charged and the connection of the accused with it, but if the record did

did not disclose such testimony, it must be presumed to have been given.

(*b*) If evidence of violence or threats of violence were necessary, it must be presumed that such evidence was given, but "violence may be operated either physically or mechanically, it may have been coercion by fear, threat, or intimation of loss, injury, obloquy or suffering." (*Crump* v. *Commonwealth*, 84 Va., at p. 944.) The record fully discloses such coercion.

(*c*) The effect of the conduct of the conspirators, which was commenced June 27, continued without interruption for two weeks, during which, by reason of the success of the unlawful undertaking, not a wheel turned on the entire railway. This justified the indictment, which specified June 28 as the time of the offense, because the wrong done by the conspirators was and was intended to be a continuing one applying to every train on every day during the period of interruption. The declarations and act during every hour of the "tie up" and "boycott" were competent as reflecting on the conduct of the conspirators at every other time. And if specific proof of conduct on June 28 was required, it must now be presumed that such proof was given.

What I have already said is a sufficient reply to 3 and 4.

I respectfully submit that the judgment should be affirmed.

JUDSON HARMON,
Attorney-General.

OCTOBER 12, 1895.